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This book is entirely new and complements the author's earlier book *The Maharashtra Ownership Flats Act, 1963.*

The book has been divided into four parts. In Part One, separate chapters on rights, liabilities and obligations of members of Co-operative Housing Societies and the method for acquisition of land for Housing Societies are discussed.

In Part Two, nine very recent and important full judgments are given as they form the basis of the law governing, and pertaining to, Co-operative Housing Societies. To these are added the author's own comments.

In Part Three, are given the forms of Standard Agreements entered into between Builders and Flat-owners in accordance with the provisions of the Maharashtra Ownership Flats Act, 1963. The various precedents which are resorted to in regard to construction, sale and transfer, etc. of ownership flats are also given.

In Part Four, the conditions for giving loans to Co-operative Housing Societies as also the procedure for allotment of land from Government have been set out. The Model Bye-Laws under the Maharashtra Co-operative Societies Act, 1960 as amended by the Government are also given. The main features of the Report of the Committee appointed by the Government pertaining to the Ownership Flat System are incorporated.

"I am glad that Shri Karmali has made a commendable effort to explain the legal implications involved in the ownership flat transactions . . . . Shri Karmali's book which is a manual in itself, will be of great assistance to the flat-purchasers, the promoters and the legal practitioners."

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by A. E. KARMALI,
B.A. (HONS) LL.B.,
Advocate, Maharashtra High Court

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—All India Reporter

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(WITH SPECIAL REFERENCE TO MAHARASHTRA)

TOGETHER WITH

The Maharashtra Ownership Flats Act, 1963, Amendment Act of 1964, Commentary, all relevant decisions of Maharashtra Co-operative Tribunal pertaining to Co-operative Housing Societies and their members, Land Acquisition for a Co-operative Housing Society, Recent Judgements and Comments, Precedents, Conditions for Loans, and Allotment of Land, to Co-operative Housing Societies, Disputes and Arbitration, Latest Amendments to Model Bye-Laws, etc. etc.

by

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WITH A FOREWORD BY
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Hon'ble Minister for Urban Development,
Government of Maharashtra

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To The Memory of

MY MOTHER

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FOREWORD

The Ownership Flats System has become an accepted and rather a sophisticated mode of acquiring residential and non-residential accommodation. The system has made significant contribution, during the past two decades, to the solution of the acute housing problem felt in the City of Bombay. The system has given rise to a peculiar legal relationship. It was the ignorance of the legal implications involved in the ownership flat system on the part of the flat-purchasers that enabled some unscrupulous promoters to abuse the system by indulging into several malpractices and causing great hardship and harassment to the flat-purchasers. The State Government had, therefore, to appoint the Ownership Flats Enquiry Committee in 1960 to examine the problems pertaining to the system. The State Government enacted the Maharashtra Ownership Flats Act in 1963 on the basis of the recommendations of that Committee.

The Maharashtra Ownership Flats Act, 1963, is a pioneering legislation. It regulates the transactions relating to the sale and purchase of the ownership flats in such a way that the rights and interest of the flat-purchasers are protected by it. The Act makes every effort which jeopardises such rights a penal offence. The complex implications of this unique legislation require to be understood clearly both by the flat-purchasers as well as the promoters of the ownership flats. I am glad that Shri Karmali has made a commendable effort to explain the legal implications involved in the ownership flat transactions. The Act is new and with novel features.

I understand that so far not much case law has been laid down under the Act. Under these circumstances Shri Karmali's book,

which is a manual in itself, will be of great assistance to the flat-purchasers, the promoters and the legal practitioners. Shri Karmali deserves to be congratulated on this bold and pioneering effort to explain a pioneering piece of legislation.

P. G. KHER
Minister for Urban Development,
Government of Maharashtra

Sachivalaya,
Bombay-32.
11 April 1967.

PREFACE

The response to my earlier book *The Maharashtra Ownership Flats Act, 1963* from lawyers, law journals and others encouraged me to make a more intensive study of the law relating to Ownership Flats in its various aspects. The result of my efforts is the present book. It is an entirely new book and in fact, complements my earlier book and both should be read together. I am confident that lawyers, builders, flat-owners, co-operative societies as well as the public will derive considerable benefit from this book.

In Part One of the book, I have included separate chapters on rights, liabilities and obligations of members of a Co-operative Housing Society as questions regarding it come up very frequently and the method for acquisition of land for Housing Societies as the law regarding it is intricate. In Part Two of the book, I have reproduced nine full judgments as they form the basis of the law governing, and pertaining to, Co-operative Housing Societies to-day. I have offered my comments in respect thereof. In Part Three, precedent Nos. 1 and 2 are the standard agreements entered into between Builders and Flat-owners in accordance with the provisions of the Maharashtra Ownership Flats Act, 1963. I have included various precedents which are resorted to in regard to construction, sale and transfer, etc., of ownership flats. In Part Four, conditions for loans to Co-operative Housing Societies from the Maharashtra State Co-operative Housing Finance Society Ltd. and Life Insurance Corporation of India as also the procedure and particulars required for complying with allotment of land from Government have been set out. The Model Bye-Laws under the Maharashtra Co-operative Societies Act, 1960 as amended by the Government and only the latest amendments thereto have been in-

corporated. The original Model Bye-Laws will be found by the reader in my earlier book *The Maharashtra Ownership Flats Act, 1963*. I have included sections 91 to 100 and 45 of the Maharashtra Co-operative Societies Act, 1960 for ready reference. I have also included Rules 75 to 86 of the Maharashtra Co-operative Societies Rules, 1961, to enlighten the reader regarding the requirements for arbitration before the Registrar's nominee. The Government had appointed a committee to go into the question of prices and areas of ownership flats. The committee has made its report which is yet to be approved by Government. The broad features of the committee's report have been included in this book with a view to enlighten the public.

I express my profound thanks to Shri P. G. Kher, the Hon'ble Minister for Urban Development, Government of Maharashtra, for contributing a foreword to my book. I must express my gratitude to my friend Mr. J. H. Dalal, Advocate, for his encouragement. I thank the publishers and printers for their kind and whole-hearted co-operation in bringing out the book within a short time.

A. E. KARMALI

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30 March 1967.

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PART ONE

TEXT AND COMMENTARY

CO-OPERATIVE HOUSING SOCIETY

LAND ACQUISITION AND CO-OPERATIVE HOUSING SOCIETY

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1

TEXT AND COMMENTARY

MAHARASHTRA ACT NO. XLV OF 1963

[THE MAHARASHTRA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1963]

[*16 December 1963*]

An Act to regulate for a certain period, in the State of Maharashtra, the promotion of the construction of the sale and management, and the transfer of flats on ownership basis.

WHEREAS, it has been brought to the notice of the State Government that, consequent on the acute shortage of housing in the several areas of the State of Maharashtra, sundry abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on ownership basis exist, and are increasing;

AND WHEREAS, the Government in order to advise itself as respects the manner of dealing with these matters, appointed a Committee by Government Resolution in the Urban Development and Public Health Department, No. S. 248/79599-F, dated the 20th May 1960, to inquire into and report to the State Government on the several matters referred to aforesaid with the purpose of considering measures for their amelioration;

AND WHEREAS, the aforesaid Committee has submitted its report to Government in June 1961, which report has been published for general information;

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AND WHEREAS, it is now expedient after considering the recommendations and suggestions made therein, to make provision during the period of such shortage of housing, for the regulation of the promotion of the construction, sale and management and transfer, of flats taken on ownership basis in the State of Maharashtra; It is hereby enacted in the Fourteenth Year of the Republic of India as follows:

Short title, extent, commencement and duration.

1. *(1)* This Act may be called the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.

(2) It extends to the whole of the State of Maharashtra.

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force in such areas, and on such dates as the State Government may, by notification in the *Official Gazette,* appoint, and different dates may be appointed for different areas.

(4) This Act shall remain in force upto and inclusive of the 31st day of March 1968,[1] and shall then expire.

(5) Section 7 of the Bombay General Clauses Act, 1904 shall apply upon the expiry of this Act, as if it had then been repealed by a Maharashtra Act.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, or show-room, or shop or godown (and includes a garage), the premises forming part of a building;

Explanation.—Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained;

(b) "prescribed" means prescribed by rules made under this Act;

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[1] Amended by Maharashtra Act No. 1 of 1966, Sec. 2.

(c) "promotor" means a person who constructs or causes to be constructed a block or building of flats for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;

(d) "Registrar" means the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, or, as the case may be, in the Companies Act, 1956;

(e) "to construct a block or building of flats" includes to convert a building or part thereof into flats.

Section 2 (C): It will be noticed that the essential ingredients of the definition of 'Promoter' are that a person (i) who constructs or causes to be constructed a building of flats and (ii) for the purpose of selling them to other persons would fall within the definition of a 'Promoter'. A person who is a promoter as defined by section 2(c) only will attract all the provisions of Maharashtra Ownership Flats Act 1963 and he will be liable to comply with all the relevant provisions of the Act—for it is not all building constructions carried by a person that would make him a promoter. For example, a person who constructs a building on behalf of a co-operative society by entering into a building contract with it will not come within the definition of a promoter.

The definition of 'promoter' therefore excludes persons who are engaged in the formation of a co-operative housing society by the voluntary act of their coming together and who are known as promoter members. The result of such exclusion will be that the benefits conferred on flat-owners by the Act and provided for by sections 3 to 11 in particular will not be available to such co-operative societies though they would be termed as ownership buildings. If a builder constructs a building for a co-operative society, his responsibility will end with the completion of the building and thereby the fulfilment of the contract, with the result that as regards disputes the remedy available to the society will be under the terms of its contract and not under the provisions of Maharashtra Ownership Flats Act. Thus, the builder cannot be required to comply with the details, specifications and information set out under section 3 and rules made thereunder, nor to rectify the defects or be liable to pay compensation in respect thereof as provided for by section 7. Even a builder can well escape from the provisions of the Act by getting members to form a co-operative society and to con-

struct buildings for them. In short, to form a co-operative housing society first and to construct buildings afterwards. This technique would well obviate completely the necessity of complying with the requirements and obligations under the provisions of the Act. This discrimination should be put an end to and the defect remedied if the Act is not to be frustrated in its objects.

General liabilities of promoter.

3. *(1)* Notwithstanding anything in any other law, a promotor who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produce, the information and the documents hereinafter in this section mentioned.

(2) A promoter, who constructs or intends to construct such block or building of flats, shall—

(a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed ; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years' standing ;

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land ;

(c) give inspection in seven days' notice or demand, of the plans and specifications of the building built or to be built on the land ; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force ;

(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided ;

(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement, the details of all

agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building ;

(f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly) ;

(g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken ;

(h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons who have taken or are to take the flats ;

(i) not allow persons to enter into possession until a completion certificate, where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority) ;

(j) make a full and true disclosure of all outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges and electricity, charges, revenue assessment, interest on any mortgage or other encumbrances, if any) ;

(k) make a full and true disclosure of such other information and documents in such maner as may be prescribed ; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor.

Section 3 : *Ownership basis*: The expression "agrees to sell on ownership basis" is nowhere defined in the Act and was used by builders prior to the Act to indicate sale of a flat under an Agreement between the builder and the flat-purchaser on ownership basis and was adopted by framers of the legislation from the trade. What legal meaning and significance is to be attached to the expression "sale on ownership basis" has not received judicial interpretation and pronouncement as yet.

But if one turns to the various steps from purchase of a flat under an Agreement to the stage of formation of a Co-operative Housing Society, one finds that rights termed as "ownership"

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provided in an Agreement of Sale of a flat with the flat-purchaser and the builder, is after the formation of a Co-operative Housing Society and on assignment by the builder of his rights, title and interest in the land and the building to the Co-operative Housing Society (which the Assistant Registrar, Co-operative Societies recognises on the basis of co-partnership tenancy only) results in vesting of ownership of the land and the building with the Co-operative Housing Society and divesting of the rights of the flat-purchaser. Now, under Section 12 of the Maharashtra Ownership Flats Act, 1963, it is obligatory on the part of the flat-purchaser to join in the formation of a Co-operative Housing Society or an Association of Flat Purchasers. The result is that the flat-purchaser who purchased a flat on ownership basis ultimately finds that his rights are illusionary as the flat-purchaser has only the right of occupancy subject to terms and conditions and the restrictions provided in the by-laws of the Society.

In my opinion, flats in a building which have been sold on ownership basis and in which the flat-owners form themselves into a Co-operative Housing Society (which though described as a co-partnership tenancy type of society by the Assistant Registrar, Co-operative Societies), it is in reality a co-partnership ownership type of society as the members possess rights of ownership in duality with the society, of which they are its members.

Retrospective : In the case of *Gangavishindas Rijharam Bajaj* v. *Advent Corporation Pvt. Ltd.*,[2] the Bombay High Court considered the question whether Section 3 of the Act was retrospective or not. It was held that Section 3 was retrospective in operation and that it applied to a case where an agreement for the purchase of a flat on ownership basis takes place before the coming in force of the Act. Mr. Justice Patel in the course of his judgment observed as follows: "Section 3 casts, notwithstanding anything in any law to the contrary, certain duties on a promoter intending to build flats, all or some of which (1) are to be taken or (2) *are taken* on ownership basis. . . . ." The italicised words of the Section are applicable to a case where an agreement for the purchase of flats has already taken place. Mr. Mehta relies upon the words "persons intending to take or taking" in support of his contention. These words qualify the noun "persons" and do not control what has gone earlier. On the other hand, the words "shall be liable" which create the liability are more declaratory in nature, and are capable of being applicable to promoters who have already agreed to sell flats. More-

[2] *Gangavishindas Rijharam Bajaj* v. *Advent Corporation Pvt. Ltd.*; 68 Bom. L.R. 161.

over, his liability is such as is usually imposed upon a vendor after he executes the agreement of sale with such modifications as are required by the circumstances of transactions such as present."

The retrospective application of Section 3 is limited to a building which is to be erected or is being erected. Elsewhere in the same case,[3] Mr. Justice Patel states : "As shown above, the language of Sections 3, 4, 5 and 9 is clearly applicable to cases where agreement had already taken place and building is to be erected or *is being erected* and the Court is not entitled to refuse to apply them."

Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.

4. Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Indian Registration Act, 1908 and such agreement shall contain the prescribed particulars; and to such agreement there shall be attached, such documents or copies thereof, in respect of such matters, as may be prescribed.

Section 4 : Prior to the enactment of the Maharashtra Ownership Flats Act, 1963 and subsequently, the contract entered into between the promoter and the flat-owner was and is the basis of their legal relationship from which flow their rights, obligations and liabilities of the parties. However, in so far as the contract between the promoter and the flat-owner is contrary to the provisions of Maharashtra Ownership Flats Act 1963, the contract to that extent will be void and illegal. It will thus be realised that the contract between the promoter and the flat-owner is of very great importance in the transaction of the purchase of a flat from a builder.

Section 17 of the Indian Registration Act, 1908 requires that certain documents which purport or operate to create, declare, assign, limit or extinguish rights in respect of immoveable pro-

[3] *Gangavishindas Rijharam Bajaj* v. *Advent Corporation Pvt. Ltd.*, 68 Bom. L.R. 161.

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perties of the value above Rs. 100/- are required to be compulsorily registered. Consequently, an agreement entered into by the parties whereby they agree to create, declare, assign, limit or extinguish does not require to be registered under Section 17 of the Registration Act for the simple reason that rights are not completely created, declared, assigned, limited or extinguished unless by the execution of a proper document. Section 4 of the Maharashtra Ownership Flats Act provides an exception to the provisions of the Indian Registration Act, 1908 inasmuch as it requires that an agreement entered into between a promoter and a flat-owner to be required compulsory registration.

The effect of non-registration of a document which is required to be compulsorily registered is in law of great consequence and hence it would be worthwhile to consider some of its important aspects. A document which is required by law to be compulsorily registered in respect of immoveable property and which has not been so registered, cannot be received as evidence of any transaction affecting such properties. Section 49 of the Indian Registration Act provides that if a document which is executed and not registered, the document is consequently inadmissible in evidence in a court of law. Law courts in India have been called upon to consider in a number of cases, instances where a document required to be compulsorily registered has not been registered and the party who has entered into possession of the property in pursuance of the agreement of sale refuses to vacate from the property. In the case of *Maneklal* v. *H. J. Ginwalla & Sons*, the Supreme Court held that an unregistered agreement of lease which required registration under the Indian Registration Act, 1908, secondary evidence was admissible under Section 65 of the Indian Evidence Act. The court also considered the question of the doctrine of part-performance under Section 53-A of the Transfer of Property Act and observed ".....but there can be no manner of doubt that defence under section 53-A is available to a person who has an agreement of lease in his favour though no lease has been executed and registered."[4]

A flat-owner who has entered into an agreement of sale with the promoter and has entered into possession but the document which is required to be compulsorily registered has not been so registered, could on the *ratio decidendi* of the above case set up the doctrine of part-performance under Section 53-A of the Transfer of Property Act as a defence to his being in original possession and could also lead secondary evidence of the contents of the said document.

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[4] *Maneklal M.* v. *H. J. Ginwalla* & *Sons, A.I.R.* (1950) S.C. 1.

5. The promoter shall maintain a separate account in any bank of sums taken by him, from persons intending to take or who have taken flats, as advance or deposit, including any sums so taken towards the share capital for the formation of a cooperative society or a company, or towards the outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any); and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes, and shall on demand in writing by an officer appointed by general or special order by the State Government for the purpose, make full and true disclosure of all transactions in respect of that account.

Promoter to maintain separate account of sums taken as advance or deposit and to be trustee therefor and disburse them for purposes for which given.

Section 5: It has been held in the case of *Gangavishindas R. Bajaj* v. *Advent Corporation Private Ltd.*[5] that Section 5 and the other Sections of the Act are retrospective in operation except the penal Section 13 which is applicable to anything done or omitted to be done after the Act came into force.

A question arose in the case of *C. Mankani* v. *Elco Investment Co. Private Ltd.* whether a person who was not a flat-purchaser could file a complaint under Section 5 in a criminal court. It was held by the trial court that an outsider could file a criminal complaint on the alleged violations of Sections 5 and 10 of the Maharashtra Ownership Flats Act. This ruling has been challenged in a Criminal Revision Application[6] filed by Elco Investment Co. Private Ltd. and a rule was issued by Mr. Justice Wagle.

6. A promoter shall, while he is in possession, and where he collects from persons who have taken over flats or are to take over flats sums for the payment of outgoings even thereafter, pay all outgoings (including ground rent, municipal or other local taxes, taxes on income, water charges, electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any), *until he* transfers the property to the persons taking over the flats, or to the organisation of any such persons.

Responsiblity for payment of outgoings till property is transferred.

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[5] 68 Bom. L.R. 161.

[6] Criminal Revision Appl. No. 162 of 1966.

7. *(1)* After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make—

After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats; and defects noticed within a year to be rectified.

(i) any alterations in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person ; or

(ii) make any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.

(2) Subject to sub-section *(1)*, the building shall be constructed and completed in accordance with the plans and specifications aforesaid ; and if any defect in the building or material used, or if any unauthorised change in the construction is brought to the notice of the promoter within a period of one year from the date of handing over possession, it shall wherever possible be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such persons shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction the matter shall, on payment of such fee as may be prescribed, be referred for decision to the Housing Commissioner appointed under the Bombay Housing Board Act, 1948 if the building is situated in the Bombay or Hyderabad area and to the Housing Commissioner appointed under the Madhya Pradesh Housing Board Act, 1950 if the building is situated in the Vidarbha region of the State, or to any officer not lower in rank than a Superintending Engineer as the State Government may by general or special order specify in this behalf, within a period of two years from the date of handing over possession. The Housing Commissioner or such officer shall after inquiry record his decision, which shall be final.

Section 7 : The 'dispute' which is to be referred to the Housing Commissioner or a Superintending Engineer as regards any

defect in the building or material used, or any unauthorised change in the construction of the building and the nature of the inquiry to be held by him will be considered in detail. The question that arises is what is the nature of the inquiry held by the Housing Commissioner or a Superintending Engineer and the decision which shall be final in relation to the dispute.

The inquiry into a dispute—*lis*—may involve three parties to a dispute or it may be between the party proposing the penalty and the party opposing it. The inquiry may be administrative or quasi-judicial. If it be quasi-judicial, it will be imperative on the part of the officer holding the inquiry to conduct the inquiry on the basis of the principles of natural justice. If the principles of natural justice are violated by the Officer holding the inquiry, a writ could be issued by the High Court to quash the inquiry and the decision pronounced thereunder.

On the application of the above principles to the inquiry to be held by the Housing Commissioner or a Superintending Engineer under this section, it will be noted that there are two contestants before the Inquiry Officer—the builder and the flat-owners. Moreover, the dispute involves rights to property and payment of compensation between the two parties. It will be further noted that the decision of the Inquiry Officer shall be final—the finality of the decision which cannot be questioned in appeal. The nature of the inquiry suggests that evidence will be recorded by the Officer and the parties will be given an opportunity to cross-examine them to test the veracity of their testimony. The decision of such an Inquiry Officer which has been made final and against which no appeal is provided for, suggests that it must satisfy objective standards. It must not be the result of the subjective satisfaction of the Inquiry Officer. All the factors taken cumulatively would go to suggest that the inquiry conducted by the Inquiry Officer must be quasi-judicial in nature and it must conform to the principles of natural justice. If in the course of its inquiry, there have been violation of the principles of natural justice, a writ will issue to quash the decision of the Inquiry Officer. Writs have been issued by the High Court to correct the decisions of inferior tribunals who have in the course of their inquiry violated the principles of natural justice.

The nature of the inquiry conducted by the Officer was considered by the Supreme Court in the case of *Board of High School* v. *Ghanshyam*.[7] The Supreme Court observed as follows:

> If a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two

[7] A.I.R. (1962) S.C. 1110.

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parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially. [A.I.R. (1950) S.C. 222 (260); A.I.R. (1958) S.C. 398; A.I.R. (1959) S. C. 107; A.I.R. (1959) S.C. 308 and A.I.R. (1960) S.C. 606 followed.]

The statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible to attempt to define exhaustively.

There is no doubt that many of the powers of the Examinations Committee appointed under Section 13 of the U.P. Intermediate Education Act (2 of 1921) under chapter VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-judicial body for performing those duties, and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee.[8]

8. If—

Refund of amount paid with interest for failure to give possession within specified time or further time allowed.

(*a*) the promoter fails to give possession in accordance with the terms of his agreement of a flat duly completed by the date specified, or any further date or dates agreed to by the parties, or

(*b*) the promoter for reasons beyond his control and of his agents, is unable to give possession of the flat by the date specified, or the further agreed date and a period of three months thereafter, or a further period of three months if those reasons still exist,

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[8] *Board of High School* v. *Ghanshyam*, A.I.R. (1962) S.C. 1110.

then, in any such case, the promoter shall be liable on demand (but without prejudice to any other remedies to which he may be liable) to refund the amounts already received by him in respect of the flat (with simple interest at nine *per cent per annum* from the date he received the sums till the date the amounts and interest thereon is refunded), and the amounts and the interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed, to the extent of the amount due, but subject to any prior encumbrances.

Section 8 : The flat-owner can demand either the refund of the moneys paid by him to the promoter if possession is not delivered by the promoter within the period contemplated by Section 8 or wait for the building to be completed and obtain possession of the flat.

The flat-owner cannot avail of both the remedies at the same time. The right of option to be exercised being with the flat-owner, he must exercise that right and having adopted one mode, he cannot afterwards retrace his course and demand the other mode.

The flat-owner cannot approbate and reprobate at the same time and having adopted one mode, he will be estopped from subsequently taking recourse to another mode on the principle of estoppel.

No mortgage etc., to be created without consent of parties after execution of agreement for sale.

9. No promoter shall, after he executes an agreement to sell any flat, mortgage or create a charge on the flat or the land, without the previous consent of the persons who take or agree to take the flats, and if any such mortgage or charge is made or created without such previous consent after the agreement referred to in section 4 is registered, it shall not affect the right and interest of such persons.

Section 9 : The promoter would be required under this section and section 3 of the Act to state his liabilities and encumbrances in respect of the property under construction. These liabilities and encumbrances must be stated as part of the Agreement of Sale of a flat; otherwise, the promoter can be compelled to do so under Rules 3 and 4.

Further, the creation of mortgages and charges on the property under construction would be permissible with the consent of the flat-owner or flat-owners. It will, however, be noted that there are no restrictions on the promoter to raise money by way

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of mortgage or charge on the property if the promoter does *not* enter into Agreements of Sale of flats during the stage of construction of the building.

Promoter to take steps for formation of co-operative society or company.

10. As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the perscribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be of a company. Nothing in this section shall effect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

Section 10: The incongruity which occurs is the conflict between the provisions of the new Act and the Maharashtra Co-operative Societies Act, 1960 in the matter of the registration of a co-operative society by the Registrar. Under section 8 of the Maharashtra Co-operative Societies Act, 1960, at least 10 members are required for the purpose of the formation and registration of a society. However, the Registrar in practice does not register a co-operative housing society until the application for registration is signed by all the tenant-members of the proposed housing society. Whereas section 10 of the new Act provides that as soon as a minimum number of persons required to form a co-operative society or a company, as the case may be, have taken flats, the promoter (i.e. builder) shall within the prescribed period (4 months provided by Rules) submit an application to the Registrar for the formation of a co-operative society or a company, as the case may be. Contravention of the section either by the builder or the flat-owner is made punishable under the Act by virtue of sections 12, 13 and 14 of the Act.

There are a number of cases where the Registrar has refused to register a society because flats have been given by members on leave and licence basis prior to the application of registration of the society. In the result, whereas the new Act requires registration of a co-operative society as soon as the minimum number of flats are disposed of to members, registration has not been possible because of inherent difficulties in the matter of formation and registration of co-operative society, nor is it possible to convey the title of the builder in respect of property to the organization of persons who take the flats which is to be

registered either as a co-operative society, a company or an association of flat-takers, as the case may be.

The result has been that the situation as regards the conveyance of the title by the builder to the legal entity formed by the flat-owners has more or less remained the same prior to the new enactment. It will thus be seen that both sections 10 and 11 of the new Act which have been put on the statute book with the view to safeguard the rights and interests of the flat-owners are practically infructuous in effect.

It may be that in an appropriate case the court may hold section 10 to be *ultra vires* the Constitution of India, 1950, as it is violative of Article 31 of the Constitution. The violation of the Constitution by section 10 of the Maharashtra Ownership Flats Act, 1963 is to be found in as much as an owner of the flat is compelled by this section and section 12(2) to join a co-operative housing society whereby his ownership rights in respect of the flat are extinguished and transferred to a Cooperative Society and his rights are reduced to more occupancy. Such compelling legislation would, in my opinion, be illegal and *ultra vires* the Constitution.

Promoter to convey title, etc., and execute documents, according to agreement.

11. A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat-takers, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

General liabilities of flat-taker.

12. *(1)* Every person who has executed an agreement to take a flat shall pay at the proper time and place the price, his proportionate share of the Municipal taxes, water and electricity charges, ground rent (if any) and other public charges in accordance with his agreement with the promoter; and where a co-operative society or a company of persons taking the flats is to be constituted, co-operate in the formation of such society or company, as the case may be.

(2) Any person who has executed an agreement to take a flat and who, without reasonable excuse fails, to comply with or

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contravenes sub-section *(1)* shall, on conviction, be punished with fine which may extend to two thousand rupees.

Section 12 : Reading Sections 10, 11 and 12 together, one finds a lacuna which needs to be remedied. The defect in the Act which requires to be remedied is that the sections speak of formation and registration of a Co-operative Society or a Company or an Association of Flat-takers (which is referred to only in Section 11 but not in sections 10 and 12) or Flat-owners but does not lay down the conditions for the formation and registration of either the Co-operative Society or the Company neither does it set down any principles for the observance of the flat-owners in the matter of the formation and the registration of either a Co-operative Society or a Company.

Let us take a case of twelve flat-owners who have purchased flats in a building consisting of twelve flats. Eleven of the flat-owners are willing to form themselves into a Co-operative Housing Society but the twelfth person who has also purchased by entering into an Agreement of Sale with the builder is willing to join in the formation and registration of a Company or an Association of Flat-owners but refuses to join in the formation and registration of a Co-operative Society. The twelfth flat-owner will be legally within his rights in refusing to join a Co-operative Society and it will be impossible for the eleven flat-owners to legally compel him to join in the formation and registration of a Co-operative Housing Society. In such a state of affairs, it will result in a stalemate which will be incapable of being set right because the option of joining a legal entity of his choice is with the flat-owners. To correct this defect, the Legislature must put checks on the right of option of the flat-owners to join a legal entity in its formation and registration of their choice.

Offences by promoter.

13. Any promoter who, without reasonable excuse, fails to comply with or contravenes any provision of this Act or of any rule made thereunder shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both; and a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section 5 shall, on conviction, be punished with imprisonment for a term which may extend to four years, or with fine, or with both.

Offences by companies.

14. *(1)* If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business by

the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section *(1)*, where an offence under this Act has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Section 14 : The section imposes criminal liability upon every person who at the time the offence was committed was in charge of, and was responsible to, the Company for the conduct of business by the Company. The proviso to sub-section (1) of Section 14 puts the burden of proof on the accused to establish that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. This section makes a departure from the principle that *mens rea* is a necessary ingredient to constitute an offence under this section.

The Supreme Court dealing with the doctrine of *mens rea* in the case of *Nathulal* v. *State of M.P.*[9] observed as follows: "*Mens Rea* is an essential ingredient of a criminal offence. A statute may exclude the element of *mens rea ;* it is, however, a sound rule of construction which is adopted in England and also in India, to construe a provision which creates an offence in conformity with the common law rather than against it except where the statute expressly or by necessary implication excludes *mens rea.*"

It will be noted that on a plain grammatical construction of the sentence that "every person who at the time the offence was committed was in charge of, and was responsible to, the Com-

[9] A.I.R. (1966) S.C. 43.

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pany for the conduct of business by the Company" means the person who must not only be in charge of but must be responsible to the Company for the conduct of business by the Company. It may be that a person who is in charge of the Company for the conduct of business by the Company may not be responsible to the Company for the conduct of its business. It is only that person who is in charge of, and responsible to, the Compay for the conduct of its business who will be liable under this section.

Power to make rules.

15. *(1)* The State Government may, subject to the condition of previous publication, by notification in the *Official Gazette*, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) under section 3, the particulars as respects the design and the materials to be used in the construction of the building and the other information and documents to be disclosed, the manner in which disclosure to be made and the documents of which true copies shall be given by the promoter;

(b) under section 4, the particulars to be contained in the agreement for sale and the documents or copies thereof to be attached to such agreement;

(c) under section 10, the period within which the promoter shall submit an application for registration of a co-operative society or a company;

(d) under section 11, the period within which the promoter shall execute the conveyance;

(e) any other matter which has to be, or may be, prescribed by rules.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule

should not be made, and notify such decision in the *Official Gazette*, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Act to be in addition to Transfer of Property Act and to over-ride contract to the contrary.

16. The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882, and shall take effect notwithstanding anything to the contrary contained in any contract.

Application of certain provisions to flats already in existence.

17. As respects flats which on the commencement of this Act have already been constructed, or converted, the provisions of sections 2, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 apply with the following modifications, that is to say—

(a) in section 2, in clause *(c)*, the words "means a person who constructs" shall be read as if the words "means a person who has constructed" had been substituted;

(b) in section 8, if the date specified or agreed to has already passed at the commencement of this Act then the promoter shall give possession within three months from such commencement of this Act; and if for any reasons beyond his control and of his agent, the promoter has been unable to give possession of the flat within three months from such commencement, he shall give possession thereof within a period of three months thereafter, or a further period of three months if those reasons still exist; and thereafter the promoter shall be liable on demand to refund the amounts on the terms and conditions provided in the said section;

(c) in section 9, the words and figure "after the agreement referred to in section 4 is registered" shall be read as if the words "after the commencement of this Act" had been substituted;

(d) in section 10, the words "As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period" shall be read as if the words "Where the minimum number of persons required to form a co-operative society or

a company have taken flats, the promoter shall within three months from the commencement of this Act" had been substituted;

(e) in section 11, the words and figure "in accordance with the agreement executed under section 4" shall be read as if the words "in accordance with any agreement made in respect thereof" had been substituted, and the words "within the prescribed period" shall be read as if the words "within three months from the commencement of this Act" had been substituted.

Act not to apply Housing Boards.

18. Nothing in this Act shall apply to the Maharashtra Housing Board and the Vidarbha Housing Board.

Section 18 : In the case of *Baburao Shantaram More* v. *The Bombay Housing Board & anr.*,[10] the question arose whether Section 3-A of the Bombay Housing Board Act (LXIX of 1948) as amended by Bombay Act (XI of 1951) which made provision for deeming the Bombay Housing Board a local authority within the meaning of Section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947) was valid and whether if it contravened Article 14 of the Constitution of India, 1950, the Supreme Court held that Section 3-A cannot be said to offend against the equal protection clause of the Constitution. The Supreme Court further held that neither Section 4 of the Bombay Rent Act nor Section 3-A of the Bombay Housing Board Act can be challenged as unconstitutional on the ground of contravention of Article 14 of the Constitution.

The Supreme Court in the course of its judgment observed as follows: "The Co-operative Societies Act does not in terms bring about any relationship of landlord and tenant between a Co-operative Housing Society incorporated under that Act and its members. There is nothing in that Act to indicate that any of the members of any of the Co-operative Housing Societies is a tenant of such Society. No lease or other document has been produced in support of the suggestion that the Co-operative Housing Societies have any tenant at all. Further, though these Co-operative Housing Societies are no doubt incorporated bodies, they nevertheless may earn profits which may be distributed amongst their members. The Board, on the other hand, is an incorporated body brought into existence for the purpose of framing housing schemes to solve the problem of acute shortage

[10] A.I.R. (1954) S.C. 153: (1954) S.C.J. 210.

of accommodation in Bombay. There are no share-holders interested in the distribution of any profit. It is under the control of the Government and acts under the orders of the Government. In effect, it is a Government-sponsored body not having any profit motive. No material has been placed before us which may even remotely be regarded as suggesting, much less proving, that the Co-operative Housing Societies or their members stand similarly situated *vis-à-vis* the Board and its tenants. The petitioner, therefore, cannot sustain his complaint of discrimination on this ground.

"Learned counsel for the petitioner then said that the effect of Section 3-A is to extend the benefit of the exemption of Section 4 of the Bombay Rent Act to the Board which, in other words, implies that the name of the Board has been added in Section 4 after the local authority. The contention is that Section 4 discriminates against the tenants of properties belonging to the Government, local authority or the Board in that these tenants are denied the benefits of the Bombay Rent Act which are available to all other tenants in Bombay. There can be no question that this exemption is given by Section 4 to certain classes of tenants and this classification is based on an intelligible differentia which has a rational relation to the object sought to be achieved by the Act. It is the business of the Government to solve the accommodation problem and satisfy the public need of housing accommodation. It was for the purpose of achieving this object that the Board was incorporated and established. It is not to be expected that the Government or local authority or the Board would be actuated by any profit-making motive so as to unduly enhance the rents or eject the tenants from their respective properties as private landlords are or are likely to be. Therefore, the tenants of the Government or local authority or the Board are not in need of such protection as the tenants of private landlords are and this circumstance is a cogent basis for differentiation. The two classes of tenants are not by force of circumstances placed on an equal footing and the tenants of the Government or local authority or the Board cannot, therefore, complain of any denial of equality before the law or of equal protection of the law. Here there is no real discrimination, for the two classes are not similarly situated. Neither Section 4 of the Bombay Rent Act nor Section 3-A of the Bombay Housing Board Act, can therefore, be challenged as unconstitutional on the ground of contravention of Article 14 of the Constitution." [11]

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[11] *Baburao S. More* v. *The Bombay Housing Board & anr.*, A.I.R. (1954) S.C. 153; (1954) S.C.J. 210.

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MAHARASHTRA ACT NO. XXIX OF 1964 [12]

An Act to amend the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.

WHEREAS, it is expedient to amend the Maharashtra Ownership flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963, for the purposes hereinafter appearing; It is hereby enacted in the Fifteenth Year of the Republic of India as follows:

Short title.

1. This Act may be called the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 1964.

Insertion of section 12A in Mah. XLV of 1963.

2. After section 12 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (hereinafter referred to as "the principal Act"), the following section shall be inserted, namely:

Manager not to cut off, withhold, curtail or reduce essential supply or service.

"12A. (1) No person, who is a promoter, or who is in charge of management or connected with the management of a block or building of flats, whether as member of a managing committee, director, secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as "the manager"), shall, without just and sufficient cause, either by himself or through any person, cut off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken by him.

(2) The person who has taken or agreed to take the flat or the occupier may, if the manager has contravened the provisions of sub-section *(1)*, make an application to the Court for a

[12] This Act received the assent of the President of India on 1 September, 1964.

direction to restore such supply or service.

(3) If the Court on enquiry finds that the applicant or the person through or under whom he is in occupation has been in enjoyment of the essential supply or service, and that it was cut off or withheld or curtailed or reduced by the manager without just and sufficient cause, the Court shall make an order directing the manager to restore such supply or service before a date to be specified in the order.

(4) The manager who fails to restore the supply or service before the date so specified, shall for each day during which the default continues thereafter, be liable upon a further direction by the Court to that effect, to fine which may extend to one hundred rupees.

(5) Notwithstanding anything contained in any law for the time being in force,—

(a) in Greater Bombay, the Court of Small Causes, Bombay,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court, and

(c) elsewhere, the Court of the Civil Judge (Senior Division), shall have jurisdiction to decide any application made under sub-section *(2)*, and no other Court shall have jurisdiction to entertain such application. No appeal shall lie from any order made on such application; but in Greater Bombay a bench of two Judges of the Court of Small Causes, Bombay, which shall not include the Judge who made such order and elsewhere the District Court, may for the purpose of satisfying itself that the order made was according to law, call for the case in which such order was made and the bench or Court aforesaid or the District Judge or any Judge to whom the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

(6) Any manager who contravenes the provisions of sub-section *(1)* shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with a fine, or with both.

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(7) The offence under sub-section (6) shall be cognizable, and shall not be triable by any Court inferior to that of a Presidency Magistrate, or a Magistrate of the First Class.

Explanation I.—In this section, essential supply or service includes the supply of water, electricity, lights in passages and on stair-cases, and lifts and conservancy or sanitary service.

Explanation II.—For the purpose of this section, withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority."

Amendment of section 13 of Mah. XLV of 1963.

3. In section 13 of the principal Act, after the words "rule made thereunder shall" the words, "where no other penalty is expressly provided for," shall be inserted.

Retrospective effect and saving.

4. The amendments made by sections 2 and 3 shall be deemed to have been inserted in the principal Act and shall be deemed to have come into force in Greater Bombay, on the 10th day of February 1964; but nothing therein shall render any person liable to be convicted of any offence in respect of any act or omission committed by him before the commencement of this Act, if such act was not an offence under the principal Act, at that date, but for the provisions herein inserted. But if any person has cut off, withheld or in any manner curtailed or reduced, any essential supply or service in respect of any flat at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 1964, and continues or allows the continuance thereof after such commencement he shall be liable to the penalties provided in the aforementioned section 2.

Section 12A : Section 12A was enacted to prevent the harassment caused by the unscrupulous promoters to the flat-owners or sometimes by the flat-owners to the flat-occupiers by withholding or cutting off essential supplies or services which was practiced for a number of reasons but the principal motive was to force the flat-occupiers or flat-owners to quit their flats or sell out their flats. To put a check to the unauthorised actions of the unscrupulous promoters, the Government of Maharashtra

has come forward with the Amendment Act of 1964.

Section 12A(1) provides that "no person, who is a promoter, or who is in charge of management or connected with the management of a block or building of flats, whether as member of a managing committee, director, secretary or otherwise, or is responsible for the maintenance thereof (hereinafter in this section referred to as *"the manager"*), *shall, without* just and sufficient cause, either by himself or through any person, cut off, withhold, or in any manner curtail or reduce, any essential supply or service enjoyed by the person who has taken a flat (or by any person in occupation thereof through or under him) in respect of the flat taken, or agreed to be taken by him."

Explanation I to Section 12A provides that "in this section, essential supply or service includes the supply of water, electricity, lights in passages and on stair-cases, and lifts and conservancy or sanitary service." It is further provided by Explanation II to Section 12A that "for the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the manager on account of which the essential supply or service is cut off by the local authority or any other competent authority."

A person who has taken or agreed to take the flat or the occupier of the flat whose any essential supply or service is withheld or cut off, or in any manner curtailed or reduced by the manager, is entitled to make an application to the court for a direction to restore such supply or service. If the court on enquiry finds that the flat-owner or the occupier has been in enjoyment of the essential supply or service and that it was cut off or withheld or curtailed or reduced by the manager without just and sufficient cause, the court shall make an order directing the manager to restore such supply or service before a date to be specified in the order. If the manager fails to comply with the order of the court, he is liable to pay a fine for every day the default continues which may extend upto Rs. 100/-. The manager also incurs criminal liability for his wrongful actions and the law has provided, on conviction, for imprisonment for a term which may extend upto three months or with fine or both. The application for restoration of essential supply or service is to be made by a flat-owner or anyone in occupation thereof through or under him within the limits of Greater Bombay to the Court of Small Causes, Bombay. In areas outside Greater Bombay, where a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, to such Court; and elsewhere to the Court of Civil Judge (Senior Division). By Section 4 of the Amendment Act, retrospective operation is given to Section 12A to a limited extent. The effect of the retrospective operation of the Section is to render illegal acts

which had already been committed and *are continued* after the Amendment Act comes into operation which fall within the scope of Section 12A (*vide* Section 4 of the Amendment Act 1964).

The question arises as to when can the action of the manager be said to be cutting off or withholding essential supply or service to fall within the scope of Explanation II to Section 12A of the Act so as to make him liable. The answer has been provided by the Supreme Court in the well-known case of *Kanaiyalal Chandulal* v. *Indumati*[13] while construing Explanation II to Section 24 of the Bombay Rent Control Act, 1947, the language of which is in *pari materia* with Explanation II to Section 12A. The Supreme Court observed as follows: "It has not been denied before us that the supply of tap water is an essential supply, and that is beyond controversy in view of Explanation I. What has been argued is that the supply of municipal water had been cut off by the municipality as a result of the default in payment of municipal dues by the appellant's predecessor-in-title. It may be that the appellant was not to blame for the default in payment of municipal dues, but it was open to him to pay Rs. 11-4-0 and have the water connection restored. He may not have been directly responsible for the cutting off of the supply of municipal water, but it was within his power to get the supply restored by the municipality on payment of the prescribed fee. Hence, in so far as the appellant omitted to do so, such an omission is attributable to him within the meaning of Explanation II which was inserted into the Act in 1953. There can, therefore, be no doubt that the appellant was continuing to withhold an essential supply within the meaning of s. 24, as it stood in 1953." In another case of *The Bombay Bullion Association Ltd.* v. *Jivatlal*[14] while dealing with the question of cutting off or withholding essential supply or service, the Bombay High Court observed as follows: "Section 24 and Explanation II to s. 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, indicate that withholding any essential supply or service includes not merely those acts or omissions which are expressly described in Explanation II but also all other acts or omissions which themselves result in such supply or service being withheld. Therefore, if the landlord omits to effect necessary repairs to his lift or otherwise fails to keep it in working order and thus makes the lift unavailable to his tenant, he has withheld an essential supply or service to his tenant within the meaning of s. 24 of the Act. So also if the landlord locks the lift and makes it unavailable to his tenant, he has withheld an essential supply or service to his tenant within the meaning of that section."

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[13] (1958) 60 B.L.R. 929 (S.C.).

[14] (1960) 62 B.L.R. 380.

The remedy contemplated by the Maharashtra Ownership Flats (Amendment) Act, 1964, to proceed against the manager for restoration of essential supply or service under Section 12A is civil as well as criminal. It has been held in the case of *Kanaiyalal Chandulal* v. *Indumati* that the remedies available to the aggrieved party are independent of each other and that it is open to the aggrieved party to choose either of the two remedies and adopt action against the defaulting party. It was held in the case of *Kanaiyalal Chandulal* v. *Indumati* that the two remedies are concurrent.

In a case falling under Section 24 of the Bombay Rent Act, it was held that the power to order restoration of essential service or supply lies with the Civil Courts specified in Section 28 and not with a criminal court.[15] It was also held that in order to attract the provisions of Section 24, it is necessary that the essential supply or service should have been enjoyed by the tenant. It would be straining the language of the section to say that "enjoyed" should mean "had the right to enjoy". The essential supply or service should have been available for the use of the tenant at some time when the Act was in force.

The act of cutting off or withholding may be either direct or indirect as the landlord may act through any person acting or purporting to act on the landlord's behalf.[16] Where a local authority or other competent authority cuts off essential supply or service on account of some act or omission on the part of the landlord, it would amount to withholding on the part of the landlord without a just or reasonable cause as stated in Explanation II.[17] On a charge of cutting off and withholding electric and water supplies, it is for the landlord to show that either he had not withheld the supply of water and electricity after it was justifiably cut off or that there was a sufficient cause for him not to connect the complainant's premises to the connections giving the building water and electricity.[18] The question whether a cause which exists in fact is or is not reasonable is a matter of law.[19] The section providing for penal consequences against the defaulting party, it must be strictly construed in his favour. In construing Section 18 of the Bombay Rent Control Act, 1947, the Supreme Court observed that it being a penal clause, it must be strictly construed in favour of the subject.[20]

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[15] *Ravirchand Bedi* v. *Emperor*, C.R.A. No. 1674 of 1948 (decided on 27-1-1949).

[16] *Gulabchand Bhagiratha* v. *Emperor*, I.L.R. Nag. 65, A.I.R. (1948) Nag. 414.

[17] *Kanaiyalal Chandulal* v. *Indumati*, 60 B.L.R. 929 (931).

[18] *State of Bombay* v. *Kurbandi Akbarali*, A.I.R. (1956) Bom. 239.

[19] *King* v. *Port of London Authority*, (1920) A.C. 1 (31).

[20] *W. H. King* v. *Republic of India*, 54 B.L.R. 435 (1952) S.C.R. 418.

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CO-OPERATIVE HOUSING SOCIETY

A Co-operative Housing Society is a creature of the statute. The Maharashtra Co-operative Societies Act, 1960 (Act XXIV of 1961) replaces the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925) and regulates and governs all types of Co-operative Societies. We shall discuss in this chapter the relationship between a Co-operative Housing Society and its members, their rights, liabilities, obligations and limitations.

Membership: To become a member of a Society, a person has either to join in the application for the registration of a Society or to get himself admitted to membership in accordance with the provisions of the Bombay Co-operative Societies Act, the rules and bye-laws applicable to such Society. Mere application for membership with payments of membership fee, share money or value of land do not confer a right of membership.[1]

On the question of founder-members joining application for registration of the Society, it was held that the bye-laws which prescribed the conditions were adopted subsequently after the Society was registered, for which purpose the appellants along with others had formed themselves into a Co-operative Society and moved for registration and got it registered. Once they had received recognition as founder members of a Co-operative Society there was no occasion for admitting them as members as they were already members. That seems to be the reason why the definition in Section 3(c) contemplates two types or classes of persons among members.[2]

A firm applying for membership of the Society and a question

[1] *M. P. Madar & ors.* v. K. B. Lal & ors., S. D. Vol. XIII, p. 19.

[2] *Dhondiram M. Shingore & ors.* v. *Chairman, Shri Varana Shahakari Sakhar Karkhana Ltd.*, S. D. Vol. XIII, p. 13.

arose—if admitted as a member is its membership against the Act. The Tribunal held that there is no prohibition under any of the provisions of the Act to admit a collective body such as a firm to membership. The word 'person' used in the Bombay Co-operative Societies Act *includes even a Company* or *an Association* and does not merely mean an individual. In the whole of the Bombay Co-operative Societies Act, there is no prohibition to admit a joint family to membership of a Co-operative Society, though the joint family may have to be represented by the Manager for the purpose of dealing with the Society.[3]

It is for the Managing Committee to decide whether to permit a person to become a member of their Society. But once that discretion is used by them, properly or improperly, it cannot be questioned by any other body. The General Meeting may change the members of the Managing Committee if it is not satisfied with the method and manner of their working, but they cannot sit in appeal on their decision for above matters, when no appeal is provided under the bye-laws.[4]

Transfer of Shares: Transfer of shares by one member to another, the Tribunal held that where the Society being unable to exercise its option has given liberty to a member to sell his shares to another who happens to be a member of the Society and who has never objected to be bound by the rules, regulations and Bye-laws, the Society cannot at a subsequent stage be allowed to retrace and resile from the original position after the transfer has been so effected. If the transfer is valid according to Bye-law No. 32 so as to bind the Society, the Society would be bound to register the said transfer and when it fails to do so, it would be competent for Registrar's nominee to direct the Society to do so. The Tribunal observed that it is quite true sanction of the Managing Committee would be necessary if one member likes to transfer his shares to another but it should also be noted that this sanction should precede that transaction by transfer. The Tribunal further observed that it is quite obvious from this Bye-law No. 32 that if the Committee is unable to pay off the value of the shares to a tenant member, when he ceases to be such, it would be within the discretion of the holder of

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[3] *Shah N. Balabhai & ors.* v. *The Dakore Co-operative Cotton Sale Ginning and Pressing Society Ltd.*, S. D. Vol. XIII, p. 130.

[4] *The Umreth Urban Co-operative Bank Ltd* v. *Chandulal Garbaddas*, S. D. Vol. X, p. 91.

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these shares to transfer them subject, of course, to Bye-law 21.[5]

The validity of transfer of interest on the death of a member to respondent No. 1 as sole nominee arose before the Tribunal, when on the death of a tenant-member, the Society transferred the house in the name of respondent No. 1 as he alone was its member on the date of the transfer, and as his father had desired to transfer the house to him. In a dispute filed later by the appellant *to claim joint tenancy,* held that under Section 27 of the Bombay Co-operative Societies Act and the bye-laws of the Society, the claim was not tenable. The Tribunal observed that Section 27, bye-laws 18 and 19 and tenancy regulation 1 show that succession to the flat is not governed merely by any personal law of the deceased. These provisions indicate that the Managing Committee can allot to the deceased member's nominee; it may allot to his heirs or even to legal representatives, provided they were members on the date of the transfer. It can even return the share capital of the deceased member and resume possession of the flat.[6]

A resolution was passed by appellant Society refusing to recognise the heirs of deceased member and directing the name of respondent No. 1 to be entered as a member in place of the deceased which was declared invalid by Registrar's nominee. On the question whether the award was valid, it was held that in view of the provisions of Section 17-A of the Bombay Co-operative Society's Act, the award passed by the Registrar's nominee is modified so as to enter the name of minor son respondent No. 2 as a minor in place of his deceased father showing the name of respondent No. 3 mother as his guardian. The Tribunal observed that "it will be seen from Section 17-A which has been amended presumably to admit a minor as a member of the Housing Society that a minor can be admitted. This amendment was deliberately made in order to prevent legal representatives if minors being thrown out from membership of a Housing Society which would entail a deprival of residential accommodation."[7]

Though Bombay Co-operative Societies Act does not provide for applications for transfer to be made before the Registrar,

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[5] *The Dadar Co-operative Housing Society Ltd.* v. *Bharat V. Thakore & 3 others,* S. D. Vol. XI & XII, Part I & II, p. 193.

[6] *William L. J. D'Souza* v. *F. J. D'Souza & anr.,* S. D. Vol. XI & XII, Part I & II, p. 53.

[7] *Jagjivanram Co-operative Housing Society Ltd.* v. *Purshottam M. Nagar & ors.,* S. D. Vol. XII, Part II, p. 229.

these are covered by the general powers of the Registrar under Section 54. Therefore unless the Registrar is shown to have failed to exercise his discretion properly and judiciously, this Tribunal should not interfere with the order of the Registrar.[8]

As to who is a 'Persistent Defaulter' under bye-law No. 14 (1) (a) arose in the undermentioned case and the Tribunal held that before there can be any forfeiture of membership for being a 'persistent defaulter' a member must be given a chance to comply with the demands. When he complies with the demand by offering to pay and when the Society puts obstacles in his way by refusing to accept such payments he cannot be treated as a persistent defaulter.[9]

Expulsion of Member: Proper notice of the allegations or proper opportunity to explain his conduct not given to a member, the Tribunal in deciding the case held that the decision arrived at by the nominee that the resolution passed in the General Meeting of the expulsion of the respondent was *bad* on the ground that no proper notice mentioning specific act alleged to have been committed by the respondent had been given to the respondent in accordance with the principles of natural justice is correct. If the appellant-Society hastened to give effect to the resolution of the Managing Committee which was *sub-judice* that the act of the Managing Committee cannot be separated or associated from the dispute which had already been referred to and was pending. In fact, it would be the duty of any Tribunal to grant every such relief that may become necessary in view of the action taken by the defendant in connection with the dispute that was pending before that Tribunal.[10]

In another case, the Tribunal held that the expulsion of the respondent from membership by virtue of the resolutions passed by the General Body as well as the Managing Committee without giving any opportunity to the respondent to explain his conduct is *illegal*. In a case where no actual financial loss has occurred or where the claimant is not shown to have been put to any particular expense, the damages to be awarded would be nominal. In the absence of any illegality pointed out by the respondent in the matter of convening the meeting except his

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[8] S. A. *Ramakrishna Aiyar* v. *The Seva Kunj Co-operative Housing Society Ltd.*, S. D. Vol. XIII, p. 241.

[9] *The Poona Harijan Co-operative Housing Society Ltd.* v. *Maruti P. Khainar*, S. D. Vol. XIII, p. 269.

[10] *The Christian Co-operative Housing Society Ltd.* v. *Somchand T. Khedawala*, S. D. Vol. XI & XII, Parts I & II, p. 128.

own exclusion therefrom, the Registrar's nominee was wrong in holding that the proceedings of the General Meeting were illegal.[11]

Where expulsion of a member was made by the General Body without any notice, the Tribunal held that the respondent continues to be a member of the Society as held by the Registrar's nominee as there was no decision by the General Body dismembering the respondent nor was any notice given to him prior to the adoption of that resolution. Dismemberment entails loss of privileges and rights and therefore before any decision is taken to dismember any person he should have notice to show cause why he should not be dismembered. While continuity of membership may entitle him to retain possession of the plot that may be assigned to him, he would not be entitled to enter into forcible possession of a plot without having paid his dues.[12]

Where a tenant co-partnership Housing Society happened to be formed by individuals who have already purchased their flats and are in possession thereof and consequently, there is no occasion for them to apply for flats, there would be no occasion for such declaration or disclosure of other property as contemplated by bye-laws 8 and 9 which have the object of ensuring that those already possessed of one residence do not obtain another and that the Society is not deceived into giving a tenement to those who already possessed one. Therefore, expulsion based upon falsity of a declaration which was not necessary to be made would *not* be valid. There would be no occasion for such declaration or disclosures of other property as are contemplated by bye-laws No. 8 and 9. They would be necessary ONLY where the intending members are not already in possession of flats and by reason of their membership desire to obtain flats from the Society. It is conceded that the Society was formed by members who had already purchased their flats from a private party.[13]

Appellant nominal member as distinguished from one holding shares and had dealings in respect of which he owed money to the Sangh, the Tribunal held that Section 54 does not make

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[11] *The Bombay City Weavers Co-operative Society Ltd. & anr.* v. *Mohamed Ebrahim Ansari*, S. D. Vol. XI & XII, Parts I & II, p. 80.

[12] *The Maheshwari Co-operative Housing Society Ltd.* v. *Prah'adji Arjunji*, S. D. Vol. XI & XII, Parts I & II, p. 133.

[13] *Smt. Sitabai R. Moorjani* v. *The Metha Mansion Co-operative Housing Society Ltd.*, S.D. Vol. XI and XII, Part I & II, p. 208.

any distinction between different types of members—nominal or otherwise for the purposes of jurisdiction and therefore there is no substance in the contention that a nominal member would not be governed by Section 54.[14]

Housing Society and Member: When a Society is formed on the basis of tenant ownership, a member is in distinct possession of a flat with a building thereon and subject to the rules and bye-laws of the Society, he is in a way an owner of that property. He is free to reconstruct, rebuild, add or substract from that property and may repair it or leave it as it is at his own free will, the Society will not normally interfere with that right of his. But in a Society based on tenant-co-partnership principles the Society as a whole is the owner of the property and it enjoys all the rights as well as meets the liability such as repairs, payment of taxes, etc., as primary liabilities of the Society and the member's right is only to the extent of the share amount that he holds in the Society, besides the undisturbed enjoyment of the block or house which he is allotted by the Society. Thus the differences is not insignificant and a member at the time of conversion is fully entitled to have his discretion either to remain in the Society or to go out of it.[15]

Where a garage was used as a charcoal shop in contravention of the regulations of the Society, which in the Society's opinion may cause nuisance, annoyance or inconvenience to the occupier of the house or neighbourhood or be prejudicial to the Society's estate whereby the Society has been prejudiced, it was held that the member had committed a breach of regulation. The Tribunal further held that the member must be deemed to have constructive notice of the lease and the terms under which the plot was held by the Society and it was the member's duty not to do any act which would be in violation of any of the covenants contained in the lease. The Tribunal consequently ordered the respondent-member to remove the charcoal shop from the garage and issued an injunction restraining the respondent from using the said garage or allowing the same for charcoal business or charcoal shop.[16]

A Housing Society undertaking to construct tenements for

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[14] *Babulal M. Bafna* v. *P. R. Mogal, Chairman, Niphad Sahakari Purchase and Sale Sangh Ltd. & anr.*, S. D. Vol. XIII, p. 22.

[15] *The Arvind Co-operative Housing Society Ltd.* v. *Dr. Chandraprasad C. Trivedi*, S. D. Vol. XI, p. 24, at 26.

[16] *The Bombay Friends Co-operative Housing Society Ltd.* v. *Babubhai K. Radhia*, S. D. Vol. X, p. 8.

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its members admitted persons as member. It was a subsidised Housing Scheme of Government for industrial workers. The respondent did not produce certificate that he was an industrial worker. The Committee made a resolution which in effect dismembered him and would deprive him of his tenement. A dispute arose between the Society and the member-respondent and the Tribunal held that when the respondent had not made any representation that he was an industrial worker but had only asked for a flat after being admitted to membership and when the Society complied with both of his requests, the Society cannot be allowed to impose any new conditions that would deprive him of his rights.[17]

A Housing Society borrowed loan from Government for construction of building and the members' liability to pay contribution before possession was delivered was considered by the Tribunal which held that liability to pay contribution arises out of membership where such liability has not been made dependent upon completion of construction and delivery of possession of tenements to members; while the Society can enforce payment of contribution, the member can independently enforce delivery of possession without making the one dependent upon the other.[18]

Plots were allotted to members by lots on freehold and leasehold land and the Society claimed at flat rate of Rs. 7-6-0 per sq. yd. for different types of land. The question arose whether the claim made by the Society was legal and equitable. It was held that the Society can legally and equitably charge the same price to the members who hold plots consisting of the different types of land in view of the fact that what was demanded by the Society from the respondent was contribution towards the share capital and not price as against immediate conveyance of the plot and as such there would be a legal obligation on the part of the Society at the time it conveys different plots to different members to see that the nature of the title conveyed to the different members is the same and further in view of the fact that the Society is dealing with its members collectively with the object of uniform treatment to all.

The Tribunal observed: "The whole argument before us had turned round the question, when a Housing Society purchases

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[17] *The Maheshwari Co-operative Housing Society Ltd.* v. *Harishchandra Pande*, S. D. Vol. XIII, p. 143.

[18] *The Majoor Co-operative Housing Society Ltd.* v. *Kantilal B. Rathod*, S. D. Vol. XIII, p. 140.

property consisting partly of land together with the title and partly of a leasehold and divides the whole into plots, whether it can legally and equitably charge the same price to the members who hold plots consisting of these different types of land. It is needless to mention that even though a leasehold may be for 999 years with an option to the lessee to purchase it after a certain period, the incidents, the rights and liabilities would be distinct and different from a land which has been purchased absolutely. In the case of lease-hold the continuance of the possession of the lessee would depend upon observance of certain terms and conditions in the lease. The right of purchase would depend upon exercise of that option which in turn would depend upon the conditions that may prevail at the time appointed for the exercise of that option. It would therefore be futile to suggest that there will be no substantial difference having regard to the period of the lease in this case between the holding of the respondent and those of others. Therefore if what the Society demands from its members before the time arrives for the Society to convey all its right, title and interest to a member, is by way of contribution towards the capital as distinguished from the price and if the Society is shown to have meted out uniform treatment to all the members, each of the members will have a warranty enforceable against the Society for conveying such title so as to provide a remedy to a plot-holder after the plot is conveyed to him, to enforce that warranty." [19]

Allotment of plots was made by the respondent Society on the basis of priority. A claim was filled before the Registrar's Nominee for a declaration that such allotment was illegal and the Tribunal held that the Registrar's nominee was right in dismissing the claim of the appellants as they appear to have made the demand for a particular plot on a particular side after having joined the Society with full knowledge of the conditions. The Tribunal observed that "the powers of the Tribunal are not intended to interfere with the autonomy of the General Body which represents the Society in the matter of managing its affairs unless the General Body has acted in violation of the principles of justice and equity." [20]

The interpretation of clause 2(14) of Indenture Form "D" arose in the undermentioned case and the Tribunal held that the in-

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[19] *The Samasta Brahmakshatriya Co-op. Housing Society Ltd.* v. *Narendra Chimanlal Desai*, S. D. Vol. XI, p. 150 at 155.

[20] *Manilal N. Gandhi & ors.* v. *Vivekanand Co-op. Housing Society Ltd.*, S. D. Vol. XII, Part II, p. 27.

terpretation put by the Registrar's nominee on clause 2(14) of the Indenture which is yet to be executed, is not correct in view of the fact that the clause in relation to payment of half the premium or consideration will have no reference to the premises constructed by the member with his own funds because while the plot could be regarded as demised, the premises cannot be said to be demised. [21]

A tenant member executed a lease in respect of a tenement and the lease agreement which has been signed by the appellant but registration was refused, the Tribunal held that it can be received as evidence of a collateral transaction. Section 49 of the Registration Act would not be applicable to arbitration proceedings under Section 54 of the Bombay Co-operative Societies Act in the same manner as provisions of the Limitation Act are not applicable. [22]

Eviction and Sub-tenants : The Society sought to eject on the ground that appellant Sundarshan changed use of premises in contravention of tenancy regulations and bye-laws of the Society and the Tribunal held that once it is conceded that alcohol is inflammable, it cannot be said that the decision of the Society about the dangers involved in it is unreasonable. The Tribunal observed that "in our opinion if it is the Society's right to judge what is good for its members and what is not, so long as the Society has not in exercising its decision acted unreasonably or in a manner opposed to the principle of natural justice, it will not be open to us to interfere. It may also be noted that the premises of the Society are meant solely for occupation as residential premises by members and their families and if the Society has taken objection to the activities which involve some danger or risk, the Society's action in objecting to those activities cannot by any means be found fault with. In this view the decision of the learned nominee that the appellant has given ground for eviction appears to be correct." [23]

The questions whether the claim against the sub-tenant for vacating premises held by respondent as member of Co-operative Society and whether the claim barred by section 28 of Bombay Rent Act, the Tribunal held that the jurisdiction under Section

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[21] *The Vijayanagar Co-operative Housing Society Ltd.* v. *A. R. Rebello,* S. D. Vol. XII, Part II, p. 159.

[22] *V. R. Narayan* v. *Malabar Hill Co-operative Housing Society Ltd.,* S. D. Vol. XIII, p. 259.

[23] *D. V. Sundarshan* v. *The Ultra Co-operative Housing Society Ltd.,* S. D. Vol. XI, p. 185.

54 of the Bombay Co-operative Societies Act to decide all disputes between Co-operative Society and its members is carved out from the ordinary jurisdiction of the law courts and conferred on the Registrar or his nominee as laid down in Section 54 and Section 28 of the Bombay Rent Act cannot create a bar against the proceedings under Section 54 of the Bombay Co-operative Societies Act. The Tribunal observed ".....The Tribunal created by Section 54 of the Bombay Co-operative Societies Act is not a court but only a domestic Tribunal whereas under Section 28 of the Rent Act what is ousted is the jurisdiction of a court and not Tribunals." [24]

The respondent-member filed a claim for a declaration that the appellant is a licensee and the question arose whether the claim was barred by section 28 of the Rent Act as the appellant claimed to be a tenant. The Tribunal held that there is overwhelming documentary evidence to show that the tenancy had been obtained by the respondent stores and that the appellant after executing an agreement had obtained the premises for occupation as licensee. The Tribunal held further that Section 28 of the Rent Act does not oust the jurisdiction of the Registrar or his nominee under Section 54. [25]

The Society made an increase in contribution due to subletting by its members and a dispute between the Society and its members coming before the Tribunal, the Tribunal held that the fixation of contribution or charges payable by the members is one of the incidents of management which vests solely and exclusively in the management and neither the Registrar nor the Tribunal would be justified in encroaching upon the rights of the Managing Committee and arrogating for themselves the right to determine what should be the contribution unless it is shown that the Managing Committee in arriving at the figure ignored the principles of justice and equity. [26]

A resolution was passed at the Special General Meeting to make an increase in House-Tax to be charged from members who had sub-let their flats and the resolution being challenged as being illegal, the Tribunal held that there was nothing illegal in passing the resolution on the basis of which the levy was made.

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[24] *Topandas Parmanand* v. *Jhamatmal Valiram Thadani* S. D. Vol. XII, Part II, p. 176.

[25] *Munir Barati* v. *Kamathipura General Co-operative Society Ltd.*, S. D. Vol. XII, Part II, p. 166.

[26] *W. J. Castellino* v. *The Castellino Co-operative Housing Society Ltd.*, S. D. Vol. XIII, p. 271.

The Tribunal observed that "if the majority while passing the resolution had before it the fact that it is the action of those who have sub-let the flats that was responsible for the increase, there is nothing wrong in their seeking to make them responsible to contribute towards the increase." [27]

The payment of management expenses under Regulation 5(b) in Form 'B' and Bye-law 82 of leaflet was challenged by appellant on the ground that he was in possession only for a part of the year and that he has not constructed on the plot. The Tribunal held that "it is perfectly clear that the subscription recovered has relation not merely to the building that may have been constructed but to the obligation of the Society to manage the Society, to maintain roads, sewers, drains and amenities. The fact that the appellant has not constructed a building would not affect the obligation on the part of the Society to manage the affairs, to maintain the roads, sewers and drain and provide for amenities, for other members have built upon their plots and the Society has to carry on its management. So if the members have divided the expenses incurred in this connection on each member at the rate of Rs. 24/- per year it would be wrong to say that the Society has been charging the same without justification or authority." [28]

On a construction of Bye-law 9 of the Society, the Tribunal held that the interpretation of bye-law 9 of the bye-laws of the respondent Society by the Registrar's nominee is not correct as it will frustrate the very purpose or object of the bye-law. The bye-law is intended to prevent persons from obtaining tenements in different societies with the possibility of depriving others who may be in need, if not from making undue gains by sub-letting. The wording of the bye-law also permits an interpretation that a member of respondent-Society is prevented from holding a plot in another Society which means that a member of respondent-Society can hold a plot only in that Society and no others. [29]

Managing Committee: The question whether irregularity—technical or otherwise in the procedure invalidates the election of the Managing Committee, the Tribunal held that an election to the Managing Committee should not ordinarily be set aside

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[27] *The Castellino Co-operative Housing Society Ltd.* v. *W. J. Castellino*, S. D. Vol. XII, Part II, p. 142.

[28] *A. R. Rebello* v. *The Vijayanagar Co-operative Housing Society Ltd.*, S D. Vol. XII, Part II, p. 214.

[29] *Chandulal K. Patel & ors.* v. *The Kumkum Co-operative Housing Society Ltd. ors.*, S. D. Vol. XI, Part II, p. 37.

on the ground of an irregularity except on proof that it materially affects the result of the elections. The burden of proof rests on the party which attacks the election on that ground. [30]

In regard to the claim that had not accrued at date of filing of the dispute, the Tribunal held that in the absence of a reference by the Assistant Registrar regarding a dispute concerning the instalments that fall due on 1st May 1958, the Registrar's nominee acted beyond jurisdiction in awarding the claims in respect of which it is not shown that there was any dispute raised by the parties prior to the reference. The Tribunal observed "to constitute a dispute there must be a demand and either omission or refusal to comply with.....Merely because a claim has accrued during the pendency, it would be difficult to assume that there is a dispute concerning it even though there might have been a dispute in regard to the previous claims." [31]

A claim was made against members of the Managing Committee for being guilty of negligence, the Tribunal held that the Managing Committee as a whole has been guilty of negligence in respect of a duty collectively cast upon them by the bye-laws and that negligence has resulted in a loss to the Society.

It has been held by the Tribunal in Appeal No. 202/58 that in strict legal analysis negligence proper connotes the complex of duty, breach and damage thereby suffered by the person to whom the duty is owing and therefore in order to succeed the plaintiff will have to prove, firstly, that there has been a certain duty cast upon the defendants, secondly, that they committed a breach thereof and thirdly, by reason of that breach the Society suffered damage. [32]

The question whether claims for isolated items out of a general account were tenable was considered by the Tribunal in the undermentioned case and the Tribunal observed "to the claims under Section 54 of the Bombay Co-operative Societies Act neither the law of pleadings nor the law of procedure applies in letter though principles of justice, equity and good conscience can be applied." [33]

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[30] *Umesh C. Karnik* v. *The Karnatak Co-operative Housing Society Ltd. & others.*, S. D. Vol. XI, p. 56.

[31] *Henribai Assaumal* v. *Sindhi Immigrants Co-operative Housing Society Ltd.*, S. D. Vol. XI, p. 148.

[32] *C. T. Mathew & others* v. *The Ordnance Factories Employees' Co-operative Credit Society Ltd.*, S. D. Vol. XII, Part I, p. 141.

[33] *Bhagwandas Daulatram* v. *Shri Ramanagar Co-operative Housing Society Ltd., by its administrator Shri Kulkarni*, Vol. XII, Part II, p. 171.

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Disputes: A "dispute" would include not only claims by a Society for debts but also demands which need not have reference to any particular date giving rise to liability.[34]

The word 'claim' is not restricted only to monetary claims and Section 54 contemplates a dispute touching the business of a Society between the Society and its members so that a dispute may also have reference to matters touching the business of the Society in which relief is possible to be granted. [35]

If upon facts apparent on the record, the Assistant Registrar finds that there is no ground to refer a dispute under Section 54, it is not necessary for him to lengthen and protract matters. Under Section 54 the nominee derives his power only from the Assistant Registrar and if, therefore, instead of delegating his power to a nominee he himself decides the matter that there is no such dispute such as could be referred there would be no substance in the contention that there should have been a reference to a nominee. [36]

Award based on terms of compromise. The Manager subscribed to terms of compromise and an award based on terms of compromise was passed. On the question of the validity of the award, the Tribunal held that manager of the appellant Society who was authorised to act and appear on behalf of the Society before the Registrar's nominee by a resolution of the Managing Committee acted beyond the scope of his authority in subscribing to the terms of compromise on behalf of the Society inasmuch as an authority to file a plaint, act and appear in a claim does not include an authority to compromise because before any dispute is compromised, a specific sanction of the Managing Committee, if not the General Body, would be necessary.[37]

A dispute was allowed by Assistant Registrar to be withdrawn and liberty to institute a fresh claim was granted. On the question whether it was permissible to allow the Society to withdraw the dispute, the Tribunal held that the respondent Society which had made the claim against the appellants under Section 54 of the Act has always the power to withdraw it. The Tribunal ob-

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[34] *Mohandas Kishnomal* v. *Ruki Mahal Co-operative Housing Society Ltd.*, S. D. Vol. XII, Part II, p. 8.

[35] *Amthalal M. Joshi & anr.* v. *The Kalyan Peoples' Co-operative Bank Ltd.*, S. D. Vol. XIII, p. 53.

[36] *The Artificial Limb Centre Employees' Co-operative Credit Society Ltd.* v. *Lt. Col. L. K. Ananthanarayanan*, S. D. Vol. XIII, p. 60.

[37] *The Jayant Co-operative Housing Society Ltd.* v. *Chinubhai Popatlal & others*, S. D. Vol. XII, Part II, p. 1.

served "as Section 21 of the Bombay General Clauses Act, 1904, shows, a power to refer implies power to withdraw." [38]

The demand for possession is a claim against the petitioner who is a member and the claim relates to the premises owned by the Society which it is the business of the Society to let out, the dispute would fall under Section 54. The Tribunal observed "in our opinion, the Tribunal constituted by Section 54 is not a Court as contemplated by the Rent Act. . . . It is one of the canons of law that where a specific domestic Tribunal has been created for deciding particular types of disputes arising between particular type of parties, no other court will have jurisdiction and in this case if the relationship between the petitioner and the respondent is as a member and a co-operative society and if the dispute is one that falls under the description mentioned in Section 54, it is the Registrar or his nominee that will constitute the Tribunal to decide that dispute." [39]

Loss caused to the Society as a result of malfeasance, misfeasance and non-feasance in the discharge of the duties by the members of the Managing Committee and sanction of General Body for instituting arbitration proceeding not obtained nor any demand was made. The question whether claim cognisable under Section 54 of the Bombay Co-operative Societies Act, the Tribunal held (1) that in the absence of any provision in the bye-laws casting liability on the part of the members of the Managing Committee for neglect to perform their obligation which is held to be necessary requisite by the Bombay High Court, it cannot be said that the omission on the part of the members of the Managing Committee was the result of any negligence or that the loss that has resulted to the Society, was the result of their negligence; (2) that the Assistant Registrar is competent to entertain their claims and refer the same to his nominee for decision since the addition of second paragraph to sub-section 1 of Section 54 by amendment subsequent to the decision in *Dinker's* case relied upon by the appellants has given a wider meaning to the term "dispute" so as to make it unnecessary that there should be a claim to the party and a demand obtained from the party. The Tribunal further held that the subsequent ratification by the General Body of the action of the Managing Committee which was within the power of the Managing Com-

[38] *Naishdrai H. Joshi & others.* v. *The Bombay State Co-operative Land Mortgage Bank Ltd.*, S. D. Vol. XII, Part II, p. 89.

[39] *Mrs. Mahamati Hiralal Mody* v. *Nirmal Co-operative Housing Society Ltd.*, S. D. Vol. XII, Part II, p. 96.

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mittee and the General Body to take will be effective and will not invalidate the action merely because the ratification was subsequent. [40]

As to the question whether the failure of the Society to make a claim for premium in the earlier proceeding amounts to giving up the claim in the subsequent proceedings, the Tribunal held that to the proceedings under Section 54, the provisions of the Civil Procedure Code do not apply and therefore technical bar if they operate contrary to the principles of justice, equity and good conscience will not be allowed to be pleaded. [41]

As to whether the principle of *Res Judicata* was applicable to proceedings under section 54, the Tribunal held as in previous decisions of the Tribunal, that the Civil Procedure Code does not apply in terms to proceedings under section 54 of the Bombay Co-operative Societies Act but the provisions of Civil Procedure Code may be relied on if justice, equity and good conscience so demands. [42]

General: On the question of territorial jurisdiction under Rule 33, it was held that the Registrar's nominee within whose jurisdiction the dispute arises has jurisdiction to decide it irrespective of the location of the registered office of the Society. [43]

The extent of liability of Managing Committee members for losses sustained by the Society was decided in the case of *Miraj Co-operative Trading Society Ltd.* v. *Kashinath G. Kulkarni and* others. [44] The Tribunal held that mere negligence on the part of the Committee to do what was expected of them without any legal obligation with penalties indicated for their breach cannot make any of the members liable. In this case the Secretary has been held liable for the specific item of misappropriation proved against him and in our opinion the award passed by the learned Nominee is correct.

The question of liability arising out of an action in tort was considered in the case mentioned below. The Tribunal observed

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[40] *Shriranga S. Tampe* v. *Dadar Co-operative Housing Society Ltd. & others.*

[41] *A. R. Rebello* v. *The Vijayanagar Co-operative Housing Society Ltd.*, S. D. Vol. XIII, p. 213.

[42] *Damodar Gopal Pataskar* v. *The Karad Urban Co-operative Bank Ltd. & others*, S. D. Vol. XII, Part II, p. 108.

[43] *The Bombay State Co-operative Marketing Society Ltd.* v. *The Umreth Sahakari Bhandar Ltd. & another*, S. D. Vol. XI, p. 12.

[44] *Miraj Co-operative Trading Society Ltd.* v. *Kashinath G. Kulkarni*, S. D. Vol. XIII, p. 185.

that actionable negligence connotes the complex concept of duty, breach and damage thereby suffered and therefore in order to succeed the plaintiff will have just to prove that there was a certain duty cast upon the defendent specifically by the bye-laws, that he committed breach thereof and in consequence of that breach damage resulted.[45]

There may be ample "misconduct" in a legal sense to make the court set aside an award, even where there is no ground for imputing the slightest improper motive to the Arbitrator. There are several instances where the courts have set aside awards on the ground of legal misconduct. In the case of *Bhogilal* v. *Chimanlal,* (30 B.L.R. 2: A.I.R. [1928] Bom. 49) Marten, C. J. observes: "Now, in reference to arbitrations: we are familiar with the use of the word 'misconduct'. It does not necessarily or at all imply anything in the nature of fraud. But it certainly may include cases where the arbitrator has failed to perform the essential duties which are cast upon him as an arbitrator, as he is occupying a quasi-judicial position."[46]

The principle that in the case of meetings of companies that the normal course of convening a meeting will not ordinarily be intercepted by a Civil Court unless there is anything illegal about it was applied by the Tribunal in the case of *The Betgeri Urban Co-operative Bank Ltd.* v. *Shri Ramchandra K. Meharwade.*[47] This is more or less on the principle that a court will not interfere with the internal management of a Company acting within its own powers (*vide V. N. Bhajekar* v. *K. M. Shinkar,* 36 Bom. L.R. 483).

While dealing with Regulations 6 and 6A of Form 'B'—Leaflet 'U'—it was held that subsequent ratification by the General Body of the action of the Managing Committee which was within its powers will not invalidate the action merely because the ratification was subsequent.[48]

An issue of specific performance arose whether the Society can be directed to pass a Sale-Deed to a member. The Tribunal observed: "But in this case the transaction between the two

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[45] *Sholapur New Pacha Peth Consumers Co-operative Society Ltd.* v. *Kisan Gundappa Kshirsagar,* S. D. Vol. XI, p. 106.

[46] *The Vasant Purnima Co-operative Housing Society Ltd.,* v. *Ashok Hiralal Kaji & others,* S. D. Vol. IX, p. 11 at 14.

[47] *The Betgeri Urban Co-operative Bank Ltd.* v. *Shri Ramchandrasa K. Meharwade,* S. D. Vol. IX, p. 24.

[48] *A. R. Rebello* v. *The Vijayanagar Co-operative Housing Society Ltd.,* S. D. Vol. XII, Part II, p. 220.

parties has been effected by the Society itself by holding the sale and accepting the bid of one who was a non-member but whom the Society has subsequently admitted as a member." It also observed that "the expression a dispute 'touching the business of a Society' used in Section 54 is wide enough to include cases where the Society being a party to a transaction between two persons takes an active part in the matter of sale and purchase between them. It cannot therefore be said that the Society's part in this case is not one which touches the business of the Society." [9]

The question of contempt of court arose and whether application for contempt of either the Registrar's nominee or the Tribunal is maintainable. It was decided by the Tribunal that when a party prosecutes another for defamation for imputations made against the former in a plaint filed by the latter, the action does not constitute any contempt of court. The Tribunal observed as follows: "A party cannot be prevented from seeking any legal redress in a court of law, when he feels that he has been wronged. When he pursues such legal course which he is advised to take, his action does not amount to any contempt of court." [50]

Service of Summons by Registered Post was a legal mode of service upon the defendant. The endorsement of refusal made on the envelope by the postman in the course of due discharge of his duties amounted to good service unless it was proved by the defendant that the endorsement appearing on the packet was wrong or incorrect inasmuch as he was not at the place when the postman made attempts to find him. [51]

The question of legality arose in regard to the addition of party by the Registrar's Nominee. It was held that the Registrar's nominee had no jurisdiction to implead the Society as co-defendant when the Assistant Registrar has not referred the claim against the Society to him. [52]

Inspection: When Section 21 of the old Act and Rule 16 framed under it have specifically provided for inspection of the particular documents mentioned in them, the implication is that

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[49] *The Brahmin Mitra Mandal Co-operative Housing Society Ltd.* v. *Kantilal Manilal Metha & another*, S. D. Vol. XII, Part I, p. 27.

[50] *Dadar Co-operative Housing Society Ltd.* v. *Krishnaji Narayah Samant & others*, S. D. Vol. XI, p. 60.

[51] *Eknath Vishnu Ghule* v. *Khed Vividh Karyakari Co-operative Society Ltd.*, S. D. Vol. XII, Part I, p. 1.

[52] *Niwarti G. Watharkar & others* v. *Bandu Pardeshi & others*, S. D. Vol. XII, Part II, p. 77.

all other documents not falling within the description mentioned in them could not be the subject-matter of inspection either by the public or by the members as of right. But if a member having a dispute with the Society seeks inspection of documents not mentioned in Section 21 and Rule 16 and which therefore are not open to public inspection, it may be necessary to ascertain the reason for such inspection—the relevancy and the propriety. [53]

The question whether Section 21 of the old Act and Rule 16 entitles a member to full and complete inspection of the Society's records with a right and facility to copy the same in the presence of the Registrar or his nominee, it was held that following the decision of this Tribunal in Revision Application No. 26 and 27 of 1959, that if a party to a dispute asks for inspection of certain documents, the Registrar or his nominee should decide with reference to each document whether it is relevant for the purpose of decision of the dispute before him and if relevant should order inspection. [54]

On the question of compromise, the Tribunal observed that though O. 23 Rule 3 of the C.P.C. does not in terms apply, the principles of natural justice would apply and that before an award is passed in terms of the compromise, it has to be decided whether a compromise had been arrived at and whether it is valid and could be given effect to in the light of the contentions put forward by the party disputing it. [55]

The General Meeting is *not bound* to sanction each and every item on the Agenda and therefore it would be sheerly unwise to restrain the General Meeting of a Society to carry out their business in a legal manner. [56]

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[53] *The Sevakunj Co-operative Housing Society Ltd.* v. *P. V. Ramaswamy*, S. D. Vol. XII, Part II, p. 152.

[54] *Vishwa Bharati Consumers' Co-operative Society Ltd. & another* v. *Ramsahay M. Varma*, S. D. Vol. XII, Part II, p. 170.

[55] *Somlata Gupta* v. *The Kings Circle Co-operative Housing Society Ltd.*, S. D. Vol. XIII, p. 86.

[56] *Dadar Co-operative Housing Society Ltd.* v. *Krishnaji Narayan Samant*, S. D. Vol. XI, p. 89.

3

LAND ACQUISITION AND CO-OPERATIVE HOUSING SOCIETY

As acquisition of land for a Co-operative Housing Society is a recognised mode of obtaining land for a Co-operative Society for the purpose of constructing and erecting a building for its members, it is desirable to study the principles and basis for the acquisition of land for a Co-operative Housing Society and the legal position in relation to acquisition of such land for a Co-operative Housing Society.

Land may be acquired for a company under the Land Acquisition Act, 1894 (Act No. 1 of 1894). A company has been defined by Section 3(e) as follows: 'Company' means "a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament (of the United Kingdom) or by an Indian law, or by Royal Charter or Letters Patent (and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912." Thus a registered Co-operative Society within the meaning of the Co-operative Societies Act, 1912 is deemed to be a Company for the purposes of Land Acquisition Act and land may be acquired for a Company under the provisions of the Land Acquisition Act.

Special provision has been made for acquisition of land for a Company by enacting Part VII. Section 39 provides that "the provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned." Thus the two conditions of acquisition of land for a Company are (*a*) obtaining the previous consent of the Provincial Government and (*b*) the Company to execute an agreement

as provided by the Act. A third condition has been provided by Section 40(1)(b) which provides "that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public."

Section 41 sets out the circumstances under which the Provincial Government may give the consent for the acquisition of land. Section 40(1) provides that such consent shall not be given unless the Provincial Government be satisfied either on the report of the Collector under Section 5-A, sub-section (2), or by an enquiry held by the Collector as under Section 40. Section 40(2) provides that such enquiry shall be held by such officer and at such time and place as the Provincial Government shall appoint. Section 41 provides that if the Provincial Government is satisfied after considering the report, if any, of the Collector under Section 5-A, sub-section (2), or on the report of the officer making an enquiry under Section 40 that the proposed acquisition is needed for the construction of work and that such work is likely to prove useful to the public, it shall require the Company to enter into an agreement with the Provincial Government providing to the satisfaction of the Provincial Government for the following matters, namely:

(1) the payment to the appropriate Government of the cost of the acquisition;
(2) the transfer, on such payment of the land to the Company;
(3) the terms on which the land shall be held by the Company;
(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;
(5) where the acquisition is for the construction of any other work the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

Thus, it will be seen that before the land can be acquired for a Company, the Provincial Government should be satisfied after considering the report of the Collector under Section 5-A, sub-section (2), or on the report of the officer making an enquiry under Section 40. It is on the conclusion of a report under Section 5-A, sub-section (2), or an enquiry under Section 40 that land could be acquired for a Company by entering into an agree-

ment with the Provincal Government as provided under Section 41.

We will, therefore, consider the requirements under Section 5-A, sub-section (2) and an enquiry conducted by the officer under Section 40. Section 5-A provides as follows:

> **5A. Hearing of objections.**— (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.
>
> (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final.
>
> (3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

On the consideration of a report submitted under Section 5-A by the Collector when the Government is satisfied that any part of land is needed for a public purpose or for a Company, it shall make a declaration to that effect under Section 6.

Section 6 provides as follows:

> **6. Declaration that land is required for a public purpose.**— (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders:
>
> Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or

some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be, and, after making such declaration, the appropriate Government may acquire the land in hereinafter appearing.

It will thus be seen that on the publication of the declaration in the Official Gazette that the land is needed for a Company, the Provincial Government becomes competent to acquire the land in the manner provided in the Act. Provisions for issue of notice to persons interested under Section 9, the provisions for enquiry and award by Collector under Section 11, and the award of the Collector when to be final under Section 12, the power to take possession under Section 16 and other provisions have been provided for. When the Collector has made an award under Section 11, he is empowered to take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances (*vide* Section 16). On the satisfaction of the Provincial Government on the report of the Collector under Section 5-A, sub-section (2) or on an enquiry held as provided under Section 40, consent for acquisition of land may be given by the Provincial Government and an agreement is thereafter entered into with the Provincial Government under Section 41. The agreement mentioned in Section 41 is a *condition precedent* to the putting into force of the provisions of Sections 6 to 37 of the Act. The terms on which the public shall be entitled to use the works must find a place in the agreement itself before the land can be acquired and the Company cannot divert the purpose to any other work without the previous sanction of the Government which sanction presumably will not be given unless the new purpose is also justified by the test in Section 40.

The Land Acquisition Act, 1894, was amended by Bombay Act IV of 1948. By Section 2(1) 'Housing Scheme' was defined to mean "any housing scheme which the Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the Provincial Government or by a local authority or a Company."

The Bombay Amendment Act of 1948 was challenged in the Supreme Court on the ground of it being void. The Supreme Court held that the Land Acquisition (Bombay) Amendment Act, 1948 was void at its inception and the lands acquired under the law should be valued in accordance with the provisions of the Land Acquisition Act (I of 1894) (*N. B. Jeejeebhoy* v. *Assistant Collector*).[1]

The acquisition of land for a Company was challenged in the case of *R. L. Arora* v. *The State of U.P.*[2] The Supreme Court held that land can be acquired for a Company under Section 40(1)(b) read with Section 41 of the Land Acquisition Act, 1894 only when the work to be constructed would be directly useful to the public and the public would be entitled to use the work as of right for its own benefit in accordance with the terms of the agreement. It further held that the notification and declaration was *ultra vires* and illegal.

As the above decision of the Supreme Court affected a number of acquisitions already made and restricted acquisitions for a Co-operative Housing Society, the Government promulgated a Land Acquisition Ordinance (No. 3 of 1962). The Land Acquisition (Amendment) Act, 1962 replaced the said Ordinance.

By Section 2 of the Amendment Act, 1962, Section 3(e) of the Land Acquisition Act, 1894, was amended by adding the following words at the end of clause (e): "or any other law relating to Co-operative Societies for the time being in force."

By Section 3 of the Amendment Act of 1962, Section 40(1)(a) of the Land Acquisition Act, 1894, was amended by inserting clause (aa). Section 40(1)(aa) provides as follows:
"that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose; or".

By Section 6 of the Amendment Act of 1962, the power was given to the Central Government to make rules. Section 7 made provision for validation of certain acquisitions. It provides as follows:

> **Section 7:** *Validation of certain acquisitions.*— Notwithstanding any judgment, decree or order of any court, every acquisition of land for a Company made or purporting

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[1] *N. B. Jeejeebhoy* v. *Asstt. Collector*, 67 Bom. L.R. (S.C.) 575.
[2] A.I.R. (1962) S.C. 764.

to have been made under Part VII of the principal Act before the 20th day of July, 1962, shall, in so far as such acquisition is not for any of the purposes mentioned in clause (a) or clause (b) of sub-section (1) of Section 40 of the principal Act, be deemed to have been made for the purpose mentioned in clause (aa) of the said sub-section, and accordingly every such acquisition and proceeding, order, agreement or action in connection with such acquisition shall be, and shall be deemed always to have been, as valid as if the provisions of sections 40 and 41 of the principal Act, as amended by this Act, were in force at all material times when such acquisition was made or proceeding was held or order was made or agreement was entered into or action was taken.

Explanation.—In this section "Company" has the same meaning as in clause (e) of section 3 of the principal Act as amended by this Act.

In exercise of the powers conferred by Section 55 of the Land Acquisition Act, 1894 (I of 1894) the Central Government framed the Land Acquisition (Companies) Rules 1963. These Rules came into force from July 1963.

The Land Acquisition (Companies) Rules, 1963, provided for constituting a Land Acquisition Committee for the purpose of advising the appropriate Government in relation to acquisition of land under Part VII of the Act: vide Rule 3. Rule 4 required the appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings and laid down the procedure for such acquisition of land for a Company. Rule 4 provides as follows:

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.—

(1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:

(*i*) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;

(*ii*) that the Company has made all reasonable efforts to get such lands by negotiating with the persons interested

therein on payment of reasonable price and such efforts have failed;

(*iii*) that the land proposed to be acquired is suitable for the purpose;

(*iv*) that the area of land proposed to be acquired is not excessive;

(*v*) that the Company is in position to utilise the land expeditiously; and

(*vi*) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the Company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall,—

(*i*) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(*ii*) determine, having regard to the provisions of sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which, in the opinion of the Collector, should be acquired for the Company; and

(*iii*) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation.— For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above-average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee.

(4) No declaration shall be made by the appropriate Government under section 6 of the Act unless—

(*i*) the appropriate Government has consulted the Committee and has considered the report submitted under this rule

and the report, if any, submitted under section 5-A of the Act; and

(*ii*) the agreement under section 41 of the Act has been executed by the Company.

Matters to be provided in the Agreement under Section 41 was laid down in Rule 5. Rule 5 provides as follows:

5. Matters to be provided in the agreement under Section 41.— (1) The terms of the agreement referred to in Section 41 of the Act shall include the following matters, namely:

(*i*) that the Company shall not, except with the previous sanction of the appropriate Government, use the land for any purpose other than that for which it is acquired;

(*ii*) that the time within which the dwelling houses or amenities directly connected therewith shall be erected or provided or the building or work shall be constructed or executed shall not exceed three years from the date of transfer of the land to the Company;

(*iii*) that where the appropriate Government is satisfied after such enquiry as it may deem necessary that the Company was prevented by reasons beyond its control from erecting, providing, constructing or executing dwelling houses or amenities or any building or work within the time specified in the agreement, the appropriate Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period of extension shall not exceed three years;

(*iv*) that if the Company commits a breach of any of the conditions provided for in the agreement, the appropriate Government may make an order declaring the transfer of the land to the Company as null and void whereupon the land shall revert back to the appropriate Government and directing that an amount not exceeding one-fourth of the amount paid by the Company to the appropriate Government as the cost of acquisition under clause (1) of section 41 of the Act shall be forfeited to the appropriate Government as damages and the balance shall be refunded to the Company, and the order so made shall be final and binding;

(*v*) that if the Company utilises only a portion of the land for the purpose for which it was acquired and the appropriate Government is satisfied that the Company can con-

tinue to utilise the portion of the land used by it even if the unutilised part thereof is resumed, the appropriate Government may make an order declaring the transfer of the land with respect to the unutilised portion thereof as null and void whereupon such unutilised portion shall revert to the appropriate Government and directing that an amount not exceeding one-fourth of such portion of the amount paid by the Company as cost of the acquisition under clause (1) of section 41 of the Act as is relatable to the unutilised portion shall be forfeited to the appropriate Government as damages and that balance of that portion shall be refunded to the Company and the order so made shall, subject to the provisions of clause (vi), be final and binding;

(*vi*) that where there is any dispute with regard to the amount relatable to the unutilised portion of the land, such dispute shall be referred to the Court within whose jurisdiction the land or any part thereof is situated and the decision of the Court thereon shall be final.

(2) Where the Company commits a breach of any of the terms of the agreement, the appropriate Government shall not make an order under clause (iv) or clause (v) of sub-rule (1), unless the Company has been given an opportunity of being heard in the matter.

(3) The appropriate Government shall consult the Committee before according any sanction under clause (1) of sub-rule (1) or extending the time under clause (iii) or making any order under clause (iv) or clause (v) of that sub-rule.

Conditions under which sanction may be given for transfer of land were provided by Rule 8. Rule 8 provides as follows:

8. Conditions under which sanction may be given for transfer of land.— Where a Company for which land has been acquired under the Act applies for the previous sanction of the appropriate Government for the transfer of that land or any part thereof by sale, gift, lease or otherwise, no such sanction shall be given unless

(*i*) the proposed transfer of land alongwith dwelling house, amenities, buildings or work, if any, is to some other Company or where the Company is a Co-operative Society, such transfer is to any or all of its members, or

(ii) where the land has been acquired solely for the erection

of dwelling houses for workmen employed by the Company, the proposed transfer of the land along with dwelling houses, if any, is to such workmen or their dependent heirs;

Provided that before giving any such sanction the appropriate Government shall consult the Committee.

The decision of the Supreme Court in *Somavati* v. *State of Punjab* [3] is an important decision on the concept of public purpose. The majority of the Supreme Court upheld the acquisition of land by the State of Punjab for the construction of a factory for the manufacture of refrigeration machinery by a private limited company. The State Government had without resorting to Part VII of the Land Acquisition Act, 1894, acquired the petitioner's lands for a public purpose by contributing Rs. 100/- from the public funds towards a total cost of acquisition which was roughly estimated at over Rs. 4,00,000/-. The majority held that the declaration made by the Government in the notification under Section 6(1) of the Act that the land was required for a public purpose was made conclusive by sub-Section (3) of Section 6 of the Act and that it was not open to the Court to go behind it and try to satisfy itself whether in fact the acquisition was for a public purpose, subject however to the exception that such a declaration could be challenged if there was a colourable exercise of power.

The Land Acquisition Act, 1894, itself permits acquisition of land for companies for the erection of dwelling houses for its workmen or for a work which the public have a right to use, which purposes the Supreme Court has stated are in substance public purposes (*Babu Barkalya Thakur* v. *State of Bombay*)[4] or public purposes in the restricted sense (*R. L. Arora* v. *State of Uttar Pradesh*).[5] It has also been held in cases where lands have been acquired for *Co-operative Housing Societies* that such housing societies subserve a public purpose.[6]

These and other cases under requisition and acquisition Acts also establish the proposition that to constitute a public purpose, it is not essential that the use or benefit of the land or service should be available to the entire community or even to

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[3] (1963) 2 S.C.R. p. 774.

[4] (1961) 1 S.C.R. 128 at 137.

[5] A.I.R. (1962) S.C. 764 at 771.

[6] (*a*) *Padayachi* v. *State of Madras,* (1952) A.I.R. Madras 756.
(*b*) *Teja Ram* v. *Union of India,* (1959) A.I.R. Punjab 478.
(*c*) *Rodha Raman* v. *State of U.P.,* (1954) A.I.R. All. 700.

a considerable section of it. Provided that the persons using the land or service are benefited not as individuals but in furtherance of the general welfare of the community the test of numbers is generally irrelevant. (*The State of Bombay* v. *R. R. Nanji*).[7]

However, the Bombay High Court while considering the provisions of the Land Acquisition Act in reference to acquisition of land for a Co-operative Housing Society considered the question of the legality of the notification issued by the Government in respect of acquisition of private lands for a Co-operative Housing Society prior to the Land Acquisition (Amendment) Act, 1962. The matter came up before Mr. Justice N. A. Mody in the case of *N. N. Gamadia and others* v. *The State of Maharashtra and others*[8] and Mr. Justice Mody after considering the provisions of the Land Acquisition Act and the Rules made thereunder held that notification issued by Government for acquisition of private lands for a Co-operative Housing Society prior to the Land Acquisition (Amendment) Act, 1962 is not a public purpose within the meaning of Section 40 of the Land Acquisition Act and consequently the impugned notification was held to be illegal and bad in law.

Mr. Justice Mody in course of his judgment observed as follows:

> In my opinion, the said judgment (Division Bench judgment of Tarkunde and Chitale JJ. dated 18th April 1962 in Special Civil Application No. 836 of 1961) is binding on me. The facts of the case are not distinguishable from those in this case. Mr. Joshi pointed out that that case was a case of completed acquisition because the notification under section 6 had been issued, whereas in this case only a section 4 notification has been issued. To my mind, that distinction makes no difference to the interpretation of the phrase "public purpose". I, therefore, feel myself bound to hold that the purpose of the acquisition mentioned in Ex. B was not a public purpose as understood in relation to an acquisition for a Company and that the impugned notification Ex. B would therefore be invalid under the law as it existed when it was issued. As the purpose of the acquisition is for the benefit of the members of the Society, a basic and complete change would be necessary

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[7] (1956) S.C.R. 18 at 25.

[8] Miscellaneous Petition No. 217 of 1962 decided on 3-12-1965.

to turn it into a public purpose. The purpose of the work as mentioned in Ex. B does not enable the work to be used by the public directly and as of right. As that infirmity is an initial infirmity, it cannot be removed subsequently by imposing any terms under section 41(5) so as to make the work capable of being used by the public. The validity of Ex. B is therefore of a nature falling within the third category mentioned by me in my said earlier judgment and is therefore incurable.

PART TWO

RECENT JUDGEMENTS AND COMMENTS

Appeal from Order No. 448 of 1964

GANGAVISHINDAS RIJHARAM BAJAJ

v.

ADVENT CORPORATION PRIVATE LTD.[1]

Coram: Mr. Justice D. V. Patel

Date: September 6, 1965

PATEL J. This is a plaintiff's appeal.

The defendant, a private limited company, proposed to construct ownership flats on a piece of land at Foreshore Road in this city and invited purchasers for the same. It had prepared tentative plans which have yet to be sanctioned by the Corporation. I am told that twenty-two flats were proposed to be constructed. The plaintiff was one of the eighteen who agreed to purchase a flat. He agreed to purchase one flat and paid Rs. 2,500/- as earnest for the same on February 22, 1962, for which the Company executed a receipt. The price to be paid was Rs. 50,000. A formal agreement was later executed on March 11, 1963. The plaintiff agreed to accept the title of the Company to the land without further investigation. It seems, as the Municipal Corporation proposed to widen the road, it did not sanction the plans as prepared by the defendant Company, and it, therefore, wrote letters to the purchasers of the flats showing its willingness to return the money taken by it. The plaintiff and some others are not willing to do so. On December 16, 1963 the Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale, Management and Transfer) Act became law. The plaintiff instituted the present suit on September 11, 1964, claiming reliefs under the Act. He does not, however, sue for specific performance of the agreement. Prayers are for (*a*) restraining the defendant company from dealing with the land on

[1] 68 B.L.R. 161.

which the flats were to be built, (*b*) direction to the defendant for registration of the agreement of March 11, 1963, (*c*) direction that the defendant furnish information required to be furnished to an intending purchaser under s. 3 of the Act, and (*d*) the appointment of a receiver. The plaintiff then took out a notice of motion for interim injunction in terms of prayers (*a*) and (*c*). The learned trial Judge discharged the notice.

The plaintiff's suit is founded on the provisions of the Act which, he says, apply to the agreement in question. The defendant contends *(1)* that this Act does not apply to the agreement, as it was executed prior to its coming in force, (2) that the agreement stood ended or terminated, (3) that the frame of the suit is bad and if it were properly framed it would have been beyond the jurisdiction of the City Civil Court and *(4)* that on merits this is not a case where apart from anything else any injunction ought to issue.

The first question is whether this Act applies to an agreement which was executed before the Act became law. Mr. Mehta in support of his contention relies upon the following observations in Maxwell on Interpretation of Statutes, 11th edn., p. 206:

> Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation.

No doubt this is the usual and important rule of construction. It is, however, clear that the ultimate aim of the Court in construing an Act is to find out the legislative intent which must be sought in the words of the Act. The above rule is based on the ground that the Legislature would not intend to produce unjust results by affecting vested rights. In recent days, there have been many enactments which have affected even vested rights for attaining greater good of the community. Moreover, in view of the requirements of the circumstances, if the legislation, either expressly or by clear implication, intends that the Act should affect vested rights, the Court cannot refuse to give it effect on the ground that it causes hardship (*Ibid.* 213) *Nilkanth Ramchandra* v. *Rasiklal.*[2] I may also add that in a statute some provisions

[2] (1948) 51 Bom L.R. 280, F.B.

may be intended to have retrospective effect and some may not.

I must now examine the language of the Act. Section 2(c) defines a "promoter" to mean a person who constructs or causes to be constructed a block or building of flats for the purpose of selling some or all of them. The words taken in their ordinary sense will include the defendant, as at present it merely intends to construct the building of flats for the purpose of sale. Section 3 casts, notwithstanding anything in any law to the contrary, certain duties on a promoter intending to build flats, all or some of which (1) are to be taken or (2) *are taken* on ownership basis. . . The italicised words of the section are applicable to a case where an agreement for the purchase of flats has already taken place. Mr. Mehta relies upon the words "persons intending to take or taking" in support of his contention. These words qualify the noun "persons", and do not control what has gone earlier. On the other hand, the words "shall be liable" which create the liability are more declaratory in nature, and are capable of being applicable to promoters who have already agreed to sell flats. Moreover, his liability is such as is usually imposed upon a vendor after he executes the agreement of sale with such modifications as are required by the circumstance of transactions such as present.

Section 4 no doubt limits the amount of deposit which the promoter can take to 20 per cent. and requires him to register the agreement. This section from its nature cannot apply to things past. The liability to register would apply only to documents the period for registration of which has not passed. Section 5 applies to future actions and is capable of application to amounts that may be received by the promoter after the Act came into operation. Sections 6 to 11 can apply to every case, whether the agreement to sell was before or after the Act came into force. Section 12 is equally applicable to such cases.

Section 13, the penal provision from its language can only apply to an act of commission or omission which is done or omitted to be done after the Act came into force, for the words are "fails to comply".

Mr. Mehta placed strong reliance upon the words of s. 17 and contended that, since by this section, ss. 2, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 are applied with certain modification to flats already constructed or converted and no provision is made respecting cases where agreements are made, the intention of the Legislature was to leave such cases out of the Act. That is not so. The language of sections referred to, required modifications, and, some period had to be prescribed for complying with the pro-

visions of the Act, and the stage for application of ss. 3, 4 and 5 had already passed in cases where flats were already handed over to buyers. Moreover, the argument based on the rule *expressio unius est exclusio alterius* is not of universal application. Very often such provisions are made for clarifying the legislative intent. Section 17 was introduced as modifications were required in such cases. The very fact that the Act was applied to such flats would show that it was intended for all cases, whether or not agreement was executed before or after the Act came into force.

Mr. Mehta argues that the Act is to remain in force only for a short period of two years and, therefore, it could not be applied retrospectively. This could hardly be a reason to limit its application as suggested. The Act was enacted to prevent malpractices of promoters of building flats and if there is necessity the Legislature may further extend it as it has done in the case of some other enactments.

As shown above, the language of ss. 3, 4, 5 and 9 is clearly applicable to cases where agreements had already taken place and building is to be erected or is being erected and the Court is not entitled to refuse to apply them. If the arguments were accepted, it would lead to anomalous results, for, what would be the position where some agreements of sale are executed before and some after the Act came into force? The learned Judge below has said that if the Act had been intended to apply to such cases, the definition of "promoter" would have been something different. The only thing that can be said is that the Legislature is entitled to use its own language to convey its intention, and it has done so. It must also be remembered that the Act was passed to prevent rampant malpractices by promoters, and by limiting its application as suggested, its purpose would be frustrated. I am, therefore, clearly of opinion that the Act is applicable to all promoters of building-flats except as suggested above, the penal s. 13 only applying to anything done or omitted to be done after the Act came into force.

Mr. Mehta argued that the agreement has terminated. I do not see how. In this connection, I am referred to letters of defendant dated November 15, 1963, reply of the plaintiff dated November 20, 1963, annexure E a letter by the plaintiff dated April 4, 1963, and the defendant's reply dated April 9, 1963 and the plaintiff's letter dated July 22, 1964. There is correspondence in between this period. There is nothing to show that the agreement stood terminated. Mr. Mehta argued that in spite of the defendant's letter, the plaintiff did not indicate that he would

be prepared to abide by the agreement. But then unless the plaintiff were shown the new plans he could not make any reply. It is true that sometimes a contract may become impossible of performance. But this is not the case here. The Municipal Corporation has accepted the altered plans and the defendant has advertised for the flats as some of the purchasers have withdrawn. In my view, the agreement is still operative and binds the parties.

Mr. Mehta then contends that the suit should have been for specific performance and in that case the valuation of the suit would be Rs. 50,000 and thus beyond the jurisdiction of the City Civil Court. In the first place, there is no clear denial on the part of the defendant to perform the contract. The time has not yet come for it. The plaintiff wants relief under the Act to which he is entitled and I do not see why the suit should be regarded as incompetent. No question of jurisdiction, therefore, can arise.

Mr. Mehta then contends that as the defendant's attitude has not at all been unfair and as a suit for specific performance would not have been decreed under the Specific Relief Act, as no building contract which would require supervision of the Court could be enforced no relief should be granted now. I am not dealing with a suit for specific performance. The question is, should the relief of interim injunction be granted? I cannot say that the conduct of the defendant is not honest or that he is guilty of underhand dealing. But that does not mean that the plaintiff's rights which require protection, should not be protected.

I, accordingly, set aside the order of the learned trial Judge and direct temporary injunction in terms of prayers (*a*) and (*c*) of the plaint.

Costs costs in the cause. Order set aside.

Appeal from Order No. 299 of 1965.

1. Shri Kantilal N. Nemani & Ors. ... Appellants

Vs.

2. Ganesh Sadashiv Thosar & Ors. ... Respondents

Coram: NAIK, J.

Date: 24th October 1966

Oral Judgment:

This is an appeal from the order of the City Civil Court

Judge dismissing the application made by the plaintiffs (appellants) for temporary injunction pending the suit, for declaration and permanent injunction. The facts underlying the litigation may be briefly stated as follows: Plot No. 209 situate at Sion East was awarded by the Bombay Municipal Corporation to defendants Nos. 1 and 2 as lessees for a period of 999 years. The lease was granted on 29.9.1961. In or about 1963 defendants Nos. 1 and 2 decided to put up a building on the plot and to sell out the flats to intending purchasers. Accordingly, defendants Nos. 1 and 2 submitted plans to the Corporation which came to be sanctioned on 7.8.63. Plaintiffs Nos. 1 to 6 and defendants Nos. 4 to 8 agreed to purchase the flats one each on certain terms to which reference will be made presently. There are two sets of agreements between the parties. One set of agreements was entered into between defendants Nos. 1 and 2 on one side and defendants Nos. 4 to 8 and plaintiffs Nos. 2 and 6 on the other. The other set of agreements was entered into between defendants Nos. 1 and 2 on one side and plaintiffs Nos. 1 and 3 on the other. It is not necessary to set out all the terms of these agreements. It will be sufficient to refer only to the essential terms. The preamble refers to plot No. 209, Sion East, admeasuring 938 sq. yds. The preamble further says that the flat-holders had taken inspection of the plans and specifications of the said building. The first term of the agreement enjoins the defendants Nos. 1 and 2 (who will hereafter be referred to as the owners of the building) should construct the building as per plans, designs and specifications with such variations and modifications as the owners of the plot may consider absolutely necessary and desirable to make thereafter. The flat-holders agreed to pay the estimated value of the flats in certain instalments. The costs of the flats were calculated after taking into account the cost of the land. The agreement stated that the cost of the land will be treated as a fixed item whereas the cost of construction would fluctuate. One of the important terms of the agreement was that the owners of the plot should get the housing sociey registered under the name "Eshramdan Co-operative Housing Society Ltd." with the help of twelve promoters selected by the owners of the plot. The flat-holders agreed that they would not have any control in the construction of the building. The only other term to which reference need be made so far as this set of agreements is concerned, as set out in the agreement runs as follows:

"... The parties of the first Part is consuming the full floor

space index permitted by the Bombay Municipal Corporation in the construction or construct such structures as may be permitted under the building bye-laws of Bombay Municipal Corporation.

The first set of agreements came into being on different dates between 1963 and 1964. The second set of agreements came into being in October 1964. There is difference on vital points in the term of the agreements between the first set and the second set. The first set of agreements speaks of the construction of a ground floor and three upper floors, although later on it refers to the right of the owners of the plot to consume the full floor space index permitted by the Bombay Municipal Corporation or to construct such structures as may be permitted under the building bye-laws of the Bombay Municipal Corporation. It may be mentioned that the rules and bye-laws framed by the Bombay Municipal Corporation have based the floor space index on the area of the plot viz., 938 sq. yds. On that basis the floor space index worked out to four floors including the ground floor. It is in this background that we have to consider the term which was newly introduced so far as the agreements of plaintiffs Nos. 1 and 3 are concerned. Even in this agreement it is stated specifically, "The said building shall consist of ground and three upper floors only." After stating that the owners of the plot would be consuming the full floor space index permitted by the Bombay Municipal Corporation in the construction of the building, the agreement proceeds to state:

Disposal of rooms on terrace if allowed by the Municipality shall be disposed of by the owners of the plot as they like as well as the car park space on the ground floor within the building.

Before proceeding to narrate further facts, it is necessary to point out that defendants Nos. 1 and 2 viz., the owners of the plot, had applied to the Bombay Municipal Corporation on 21.11.63 for the grant of a triangular piece of land attached to their original plot of the area of twenty five square yards. This application was placed before the Improvements Committee of the Corporation. Eventually on 6.10.64 the proposal was sanctioned. It may be noticed that the second set of agreements took place after the sanction of the additional area of twenty five square yards triangular plot by the Corporation. Another

fact to which reference need be made at this stage is the agreement between defendants Nos. 1 and 2 on one side and R. S. Godbole, defendant No. 7, chief promoter, relating to the transfer of the plot and its price. The owners of the plot agreed to transfer the plot in favour of the chief promoter i.e., Godbole, defendant No. 7, for a sum of Rs. 75,000/-. Later on, the chief promoter was to transfer the plot to the society if and when the same was registered. After the sanction of twenty five square yards by the Corporation to the owners of the plot, the latter submitted the amended plans which were sanctioned by the Corporation on 23.11.1965. After some negotiations with the existing flat-holders, defendants Nos. 1 and 2 decided to give away the terrace flat to defendant No. 3. Accordingly, an agreement was entered into between the parties on 27.4.66. Prior to that i.e. on 11-4-66, defendant No. 3 had applied to the Society for being admitted as a member. The said application was rejected by the Society on 3.5.66. In the meantime, the owners of the plot started the construction of the terrace flat with effect from 18.5.66. The Society filed a suit in the month of May against the present defendants Nos. 1 to 3 for an injunction restraining them from proceeding with the construction of the flat. An interim injunction was granted. After hearing the defendants in that suit the injunction came to be dissolved. Eventually, the society withdrew the suit with liberty to file a fresh suit. On 17.6.1966 a suit was filed by the plaintiffs including the Society, which is plaintiff No. 7 claiming a number of reliefs against defendants Nos. 1 to 3 and adding the other defendants as being interested in the reliefs claimed. The main relief was that of a declaration. The plaintiffs claimed that defendants Nos. 1 and 2 are holding the plot No. 209 admeasuring 938 sq. yds. and the building constructed thereupon as the trustees for the plaintiffs and defendants Nos. 4 to 8 pending the execution of the deed of conveyance in favour of the society by them. They also asked for a permanent injunction restraining defendants Nos. 1 to 3 and any person on their behalf from carrying on the construction of the flat on the terrace of the building.

Pending the suit they asked for a temporary injunction which having been refused, the plaintiffs have now come up in appeal to this Court.

Mr. Sakhardande, for the plaintiffs, contended that the rights claimed by the plaintiffs in the suit have a two-fold basis: firstly, contractual obligations and secondly, statutory obligations arising out of the provisions of the Maharashtra Ownership Flats Act.

I will first take up the basis of contractual obligations. Without going into the details it may be pointed out that the agreements are silent as to what is to happen to the terrace. None of the flat-holders has been awarded any kind of right on the terrace. What will happen after the property in the plot and the terrace has been transferred to the society is a matter on which I need not say anything at this stage. In so far as the plaintiffs' claim is based on the terms of the contract, it is sufficient to point out that no right to the use of the terrace has been conferred or has even been touched upon in any of these agreements.

Mr. Sakhardande laid considerable emphasis upon the term in the agreements viz., that the building would comprise one ground floor and three upper floors. As stated earlier, this has to be read in conjunction to the term relating to the consumption of full floor space index. The full floor space index is based upon the area of the plot on which the construction is to be had. Now, the floor space index is determined by the rules and bye-laws of the Municipal Corporation. These rules and bye-laws may change. If by change in the rules and bye-laws greater floor space index is allotted, then under the term of the agreements relating to the full floor space index itself the owners of the plot would be entitled to put up another floor or more floors within the permissible limits. I do not, therefore, think that the owners of the plot are in any way by reference to the authority for construction four floors including the ground floor. This has to be read in the context of the full floor space index and the possibility of the said index raising depending upon certain eventualities viz., acquisition of greater space or change in the rules and bye-laws of the Municipal Corporation. In my opinion, the condition viz., that the owners of the plot are to consume the full space index permitted under the rules and bye-laws of the Municipal Corporation, must prevail over the statement of facts, viz., that the construction was to comprise a ground floor and three upper floors. This is so far as the agreements entered into by the majority of the flat-holders. Turning to the agreement of the defendants Nos. 1 and 2 with plaintiffs Nos. 1 and 3, which, as pointed out earlier, is entered into after the acquisition of the additional area of the land by the defendants Nos. 1 and 2, there is a specific provision to the effect that the rooms on the terrace if allowed to be constructed by the Corporation are at the disposal of the owners of the plot viz., defendants Nos. 1 and 2, the same thing applies to the car park space on the ground floor of the building. It is significant

to note that a specific term also appears in the context of the building comprising a ground floor and three upper floors and also in the context of the owners of the plot consuming all the full floor space index permitted by the Corporation in the construction of the building. It is, therefore, clear that there is nothing in the agreement which will prevent the owners of the plot from constructing a flat or flats on the terrace, which will be a fourth floor so far as the contemplated floor area is concerned.

Mr. Sakhardande contended that the owners of the plot cannot be allowed to take advantage of their own wrong viz., delay in passing a conveyance deed in favour of the Society. In that connection, he pointed out that defendant No. 1 has been insisting upon the society for purchasing the area of twenty five square yards newly acquired by him. He complained that the object of his insistence is to increase the floor space index and thus indirectly gain an advantage of being able to put up a floor on the existing terrace. It is not necessary to enter into the various points of dispute that have arisen between the parties as to why the conveyance deed has not so far been passed. According to defendant No. 1, a sum of Rs. 24,309/- is still due from the flat-holders. In that connection, defendant No. 1 has submitted statement of accounts to the President of the Society (Defendant No. 8). In the reply given the accounts have not been challenged specifically by the President or by the members of the society. Apart from this dispute, it is necessary to note that according to the plans as originally disclosed to the flat-holders and sanctioned by the Corporation there was no provision for the galleries and the area of the kitchen of each of the flats was 11 ft. x 9 ft. It is an admitted fact that, as a matter of fact, the area of the kitchen of each of the flats was 11 ft. by 9 ft. It is an admitted fact that, as a matter of fact, the area of the kitchen of each of the flat to-day is 14 ft. x 9 ft. It is also admitted that galleries have been provided to each of the flats and they exist to-day. It is the case for the owners of the plot that although they started construction on the basis of the first sanctioned plans, still they were hopeful that they would succeed in the request made by them for the acquisition of the area of twenty five square yards. Once they succeeded in their attempt at acquiring that much area it would be possible for them to put up one more floor. It would also be possible for them to provide for the galleries and give larger space for the kitchen in each of the flats. They have, therefore, contended that they had put up a firm foundation on which

the structure of a ground and four upper floors might stand and that in the course of the construction they also increased the area of the kitchen and provided for the galleries in anticipation of the sanction. This was possible for them only because of the acquisition of the additional area of twenty five square yards. Mr. Sakhardande pointed out that the amended plans were submitted only on 23.11.65 by which time the construction work was complete. He also pointed out that as a matter of fact, part completion certificate was given as far back as 27.10.65. He, therefore, suggested that the story set up by the owners of the plot viz., that they had already provided for the galleries and also large area for the kitchens of the flats, implies that they had committed violation of the municipal laws. It is not necessary for us to enter into the discussion on this question because it is for the Municipal Corporation to complain that its rules have been violated. What is necessary to be noted is that the flat-holders have taken advantage of the added area of the kitchens as also the galleries, which the owners of the plot rightly or wrongly, legally or illegally provided for. It does not lie in the mouth of the flat-holders now, after taking advantage of these additional amenities, to turn round and say that the construction could not have been made on the basis of the amended plans and if it was made on the assumption that additional area would be granted it would amount to indirect violation of the rules of the Corporation. It is significant to note that as a result of the sanction of the area of twentyfive square yards by the Corporation, an accretion has taken place to the area of original plot of 938 sq. yards. Defendant No. 1 is not grudging that the society should acquire the full area of 963 square yards which includes the newly acquired area of twentyfive square yards. As a matter of fact, whether defendants Nos. 1 and 2 grudged or not, if there is an accretion to the plot, undoubtedly the additional area will go with the plot, and whoever becomes the owner of the plot will be entitled to the additional area. The advantage of the increase in the floor space index has arisen by result of this accretion. It may be that had the conveyance deed been completed before the acquisition of the additional area, the society would have become the owner of this accretion and it is only the members of the society who could have taken advantage of the increase in the floor space index. The fact, however, remains that accretion has taken place prior to the conveyance of title in favour of the society. An application was made as far back as 21.11.63 i.e. before the coming into existence of any of the agreements with

any of the flatholders. It is in evidence that defendant No. 1 paid a sum of Rs. 3,750/- to the Corporation as compensation for the new acquisition. This payment was made on 20-10-64. The flat-holders themselves have been benefited, as stated above, from the present acquisition. It was pointed out that the bye-laws framed by the society were submitted to the registrar for sanction on 24.11.64. Along with the bye-laws the plan has also been submitted. The area of the plot as shown in the plan is 963 sq. yds. The change in the shape and size of the plot also has been shown by red lines from which the triangular area of twenty five square yards newly acquired becomes clearly visible. It is significant to note that all the eleven members of the society have put their signatures below the printed book containing the by-laws of the society. A. P. Valame, on behalf of the society, submitted the application along with the plan and a printed copy of the bye-laws purporting to do so under the instructions from the Chief Promoter (defendant No. 7) as also defendant No. 1. These circumstances clearly indicate that the flat-holders were aware of the accretions; that they were also aware of the advantage that was accrued to them as a result of the accretion and they were keen on taking advantage of the same. This supports the theory of implied consent on behalf of all the flat-holders put forward by the owners of the plot. The acquisition of the area of twentyfive square yards has also increased the car park space as also the area of the compound. It is equally important to note that a lift has been provided to the building although the same was not included as one of the terms of any of the agreements. The amount of Rs. 24,000/- and odd claimed by the owners of the plot included the cost of the lift. Defendants Nos. 1 and 2 have asserted that they will renounce their claim for a sum of Rs. 24,000/- and odd and would get themselves reimbursed in respect of sum out of the price of the flat which defendant No. 3 has agreed to pay to them. Having regard to the terms of the agreement and having regard to the circumstances set out above, it is not possible to hold that there has been any breach of the contractual obligations by defendant Nos. 1 and 2 in favour of the flat-holders which would call for any kind of relief of a temporary injunction.

Turning to the second line of argument followed by Mr. Sakhardande, the first thing to be noted that the Ownership Flats Act came into being on 10.2.64 i.e., after the work of construction had already commenced. The preamble to the Act states that the Act was enacted with a view to put a curb upon

the abuse of and malpractices that were rampant and for which the promoters of the building were largely responsible. The word "promoter" has been defined in s. 2(e) of the said Act as meaning "a person who constructs ..... building of flats for the purpose of selling some or all of them to other persons, or to a company, cooperative society or other association of persons". Defendants Nos. 1 and 2, who have caused the building to be constructed will become the promoters within the meaning of this definition. Section 6 of the said Act provides that the promoter shall be responsible for payment of the outgoings etc. till the property is eventually transferred. Section 7 is very important and in fact it is on this section that the entire superstructure of the argument of Mr. Sakhardande has been built up. It runs thus:

> After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make
>
> (i) any alterations in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person, or
>
> (ii) make any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.
>
> 2. Subject to sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid; and if any defect in the building or material used, or if any unauthorised change in the construction is brought to the notice of the promoter within a period of one year from the date of handing over possession, it shall wherever possible be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such persons shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction, the matter shall, ... be referred for decision to the Housing Commissioner ..... The Housing Commissioner or such officer shall after inquiry record his decision, which shall be final.

The opening words of sub-section (1) of sec. 7 refer to the

circumstance that the provisions of the said section will come into play "after the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats". *Mr. Sakhardande contended that the plans and speficications spoken about here must be original plans which were sanctioned by the Corporation. Ordinarily, that would be so.* In the present case, however, it seems clear that construction was not made strictly according to the plans and specifications originally submitted and some additions and alterations were effected. It is not possible to hold on the evidence as to when these alterations came into being, nor is it necessary to enter into a discussion on that aspect of the matter. In view of the fact that flatholders have not objected to the alterations particularly in the size of the kitchens and the provisions for galleries, there can be no doubt that they had given their consent to the said alterations. Clause (i) of sub-s.(1) of s. 7 does not apply to the present case viz., the proposed construction of a flat on the terrace. Mr. Sakhardande also conceded that the first part of clause (ii) may not apply to the present case. He, however, emphasized that an additional floor on the terrace amounts to an additional structure and, therefore, falls within the mischief of clause (ii) of sub-s.(1). The expression used in clause (ii) is 'additional structures" and not "additional structure". It is not necessary to give a final verdict about the precise connotation of the expression "additional structures" at this stage. Assuming for the purpose of this interlocutory application that the adding of a terrace flat amounts to an additional structure, the first point to be considered is whether this case falls within the purview of sub-s.(2) of s. 7 of the said Act. Mr Sakhardande contended that sub--s. (2) is confined to the case of any defect in the building or material used or an unauthorised change. He contended that the word "change" is synonymous with the word "alterations", which had been used in clause (i) as also in the first part of clause (ii) of sub-s. (1) of s. 7. He, therefore, suggested that the case of additional structure falls outside the purview of sub-section (2) of s. 7. Prima facie, it is difficult to accept this line of reasoning. No satisfactory reason has been suggested as to why the legislature should contemplate the exclusion of one item out of the three items mentioned in clauses (i) and (ii). If Mr. Sakhardande's argument is correct it would mean that the question of alterations in the structure of the flat as also in the alterations of the building would have to be placed before the Housing Commissioner. The question

of construction of an additional structure falls outside the scope of the Commissioner's jurisdiction and the civil court, therefore, would continue to have jurisdiction to entertain a claim based on that ground. There does not appear to be any logic behind this supposed exclusion of one item from the jurisdiction of the Housing Commissioner. Secondly, it is significant to note that the expression used in sub-s. (2) viz., unauthorised change in the construction, does not appear either in clause (i) or clause (ii) of sub-s. (1). The words appearing in clause (i) and (ii) of sub-s. (1) are "alterations in the structure of the flat", "alterations in the structure of building" and "construct any additional structures". It appears to me that the legislature instead of repeating all the three items has used a comprehensive phraseology viz., unauthorised change. This expression obviously embraces the words "alterations in the structures of the flat, alterations in the structure of the building" as also the words "construct any additional structures". Prima facie, therefore, if there is a dispute between the parties on the question relating to the construction of additional structures that must also be referred to the Housing Commissioner. If that is so, the plaintiffs cannot take their stand on the provisions of the Maharashtra Ownership Flats Act, 1963, so far as this suit is concerned.

Finally references may be made to s. 41 of the Specific Relief Act 1963, which relates to the circumstances in which an injunction may be refused. S. 41 in effect lays down that an injunction cannot be granted.

> (*a*) to prevent the breach of a contract the performance of which would not be specifically enforced.

In the present case, it was not shown which specific term of the contract was being broken, nor was it shown to the satisfaction of the court that the term of which the breach was contemplated was capable of specific enforcement. It is well settled that if a permanent injunction could not be granted to the plaintiffs they would not be entitled to a temporary injunction. It may also be pointed out that the main prayer viz., for a declaration that defendants Nos. 1 and 2 will hold the property in trust with them, does not appear to be legally tenable. *The doctrine of equitable ownership has not been embodied in the Transfer of Property Act.* Section 54 of the Transfer of Property Act, on the other hand, provides that a contract for sale of immovable property does not of itself create any interest in or

charge on such property. The relief of injunction claimed in the plaint would be ancillary to the relief of declaration sought for. It would thus appear that the suit suffers from an initial defect and the same cannot be remedied by making an all round complaint as was sought to be made by Mr. Sakhardande that the fault lies with the defendants Nos. 1 and 2 in delaying the passing of the conveyance deed. At whose instance the delay has occurred is a matter which will have to be gone into at the trial. Whatever that may be, I was unable to understand the precise nature of the grievance of the plaintiffs, who have rushed to the Court for preventing the defendants Nos. 1 and 2 from putting up a flat on the terrace. None of the flat-holders would be affected one way or the other by the proposed construction. On the other hand, they would be relieved from the obligation (if any) of paying the sum of Rs. 24,000/- and odd, they have also got the additional amenities of the lift and additional car space. They would also get the ownership of the additional area of twentyfive square yards. I repeatedly asked the question to Mr Sakhardande how and in what way the flat-holders are aggrieved if a terrace flat was put up, all that he was able to tell me was that the area of the terrace would shrink and the flat-holders would lose the advantage of putting the entire area of the terrace to use whenever an occasion demanded. As I have pointed out earlier, no reference has been made in any one of the agreements to the right of the use of the terrace. Such a right can flow only after the conveyance deed has been passed. Even as it is, it appears to me that the remaining area of the terrace could be utilised by the flat-holders provided, of course, the spirit of give and take prevails amongst them. There is no reason why they should not be able to use the terrace that will be added to the additional flat which is proposed to be put up on the existing terrace. These are matters of mutual adjustment between the flat-holders.

The result is, the appeal fails and is dismissed with costs.

Comments: It will be noted that the undermentioned decision is of far reaching importance. First, it lays down the principle that an occupant of a Co-operative Housing Society though not a member of the Society who is involved in a dispute with a member of such Society would fall within the ambit of the expression *dispute touching the business of a Society*. Second that

such a dispute between the occupant and the member is cognizable by the Registrar under the Maharashtra Co-operative Societies Act, 1960; and third, impliedly that such dispute falls exclusively within the jurisdiction of the Registrar or his nominee.

It will be further noted that this decision though it conferred jurisdiction on the Registrar in cases where a person was not a member of the Society, yet strangely enough refused to grant relief to the Bank in Miscellaneous Petition No. 312 of 1964,[3] where the Bank an assignee in execution proceedings against a defaulting member could not recover possession from the occupant (who obstructed the execution of the award as an obstructionist) and who claimed through the judgment debtor.

It will also be noted that the above decision cannot be reconciled with the principle laid down in the subsequent case of *Dharamchand Premchand* v. *The Kopargaon Taluka Kapus Ginning and Pressing Socety Ltd.*[4] in which the learned Chief Justice Chainani delivered judgment while construing the very sections of the Maharashtra Co-operative Societies Act, 1960.

The judgment is reproduced below:

Special Civil Application No. 2048 of 1963
(With Special Civil Application No. 1249 of 1964
and
Miscellaneous Application No. 312 of 1963[5]
I. R. HINGORANI v. PRAVINCHANDRA KANTILAL SHAH
Coram: The Hon'ble Mr. H. K. Chainani, Chief Justice, and Mr. Justice Gokhale
Date: March 1st 1965

CHAINANI C. J. These three applications have been heard together, because they raise a common question in regard to the interpretation of s. 91 of the Maharashtra Co-operative Societies Act (hereinafter referred to as the Act). The facts in application No. 2048 of 1963 are as under. Respondent No. 1 in this application is a member of Shalimar Co-operative Housing Society. As such member he is the holder of a flat on the fifth floor of Shalimar building, which belongs to the society. On April 24, 1959, there was a leave and license agreement between the petitioner and respondent No. 1, by which respondent No. 1 allowed the

[3] 67 Bom. L.R. 306.
[4] 68 Bom. L.R. 177.
[5] 67 Bom. L.R. 306.

petitioner to occupy his flat on payment of monthly compensation of Rs. 250 for a period of eleven months. Respondent No. 1 subsequently revoked the leave granted to the petitioner to occupy the flat and on March 8, 1963, called upon the petitioner to hand over possession of the premises and also to pay arrears of compensation due from him. As the petitioner did not vacate the flat, respondent No. 1 made an application to the Registrar that the dispute should be decided under the provisions of the Act. In this application he asked for possession of the flat, Rs. 3,250 as arrears of compensation and also future compensation until possession had been delivered. The Assistant Registrar, after going through the application made by respondent No. 1, passed an order that a dispute within the meaning of s. 91(1) of the Act existed and, therefore, referred this dispute for decision to the nominee mentioned in his order. Notice was then issued to the petitioner. He appeared before the nominee and filed a written statement, in which he contended that the nominee had no jurisdiction to decide the dispute. It appears that the petitioner thereafter addressed a letter to the Assistant Registrar in the matter. On November 12, 1963, he was informed by the Assistant Registrar that the question whether the matter fell within the purview of s. 91 of the Act had been already considered before referring the same to the Registrar's nominee and that consequently the petitioner's application had been filed. Thereafter the petitioner filed the present special civil application in this Court, in which he has prayed that the order of reference made by the Assistant Registrar as well as the proceedings pending before the nominee should be quashed.

In the other application No. 1249 of 1964, respondent No. 3 is a member of the Nirmal Co-operative Housing Society, respondent No. 4. As a member of the Society respondent No. 4, he had been allotted a flat on the second floor of the society's building. On August 23, 1960, respondent No. 3 gave the flat on leave and license basis to the petitioner. On the same day the petitioner addressed a letter to respondent No. 3, in which the terms of agreement are mentioned. In this letter he has stated that permission had been given to him to occupy the flat from August 23, 1960, on leave and license basis on payment of Rs. 125 per month for the use of the premises. On November 27, 1963, the Society respondent No. 4 gave a notice to respondent No. 3 calling upon respondent No. 3 to quit, vacate and deliver peaceful possession of the flat to the society, as he had not been residing in the flat allotted to him and had parted with its possession in contravention of bye-law 78. On February 3, 1964,

respondent No. 3 gave a notice to the petitioner cancelling and revoking the leave and license granted to him to occupy the flat and called upon him to quit, vacate and deliver peaceful possession of the flat to respondent No. 3. In July 1964, he made an application to the Registrar requesting that the dispute may be referred for decision under ss. 91 to 96 of the Act. He asked for an order directing the petitioner to quit, vacate and deliver vacant and peaceful possession of the flat. He also prayed for arrears of compensation as well as future compensation. On August 4, 1964, the Assistant Registrar passed an order stating that he was satisfied that a dispute within the meaning of s. 91 of the Act existed and referred the same for decision to his nominee respondent No. 2. Thereafter the petitioner approached this Court. In his application he has prayed that the order made by the Assistant Registrar respondent No. 1 referring the dispute for decision to his nominee should be set aside.

The dispute in Misc. Application No. 312 of 1963 is about the ground floor of a building, which originally belonged to respondent No. 4. On June 29, 1961, respondent No. 4 executed an agreement, by which he leased the entire ground floor of his building to the petitioners for a monthly rent of Rs. 250. Clause 6 of this agreement mentions that the property had been mortgaged to the Deccan Merchants Co-operative Bank, respondent No. 3. On October 26, 1961, in proceedings under s. 91 of the Act between respondents Nos. 3 and 4, the Registrar's nominee passed a consent award for Rs. 4 lakhs against respondent No. 4. As respondent No. 4 committed default in paying the amount under the award, on January 3, 1963, an order was made under s. 98 of the Act for the sale of the building. As there were no bidders, on May 13, 1963, the Collector issued a certificate of transfer under s. 100 of the Act in favour of the Bank, respondent No. 3. Under this certificate the right, title and interest of respondent No. 4 in the building was to vest in respondent No. 3. On June 5, 1963, respondent No. 3 gave a notice to the petitioners that their possession of the premises was unauthorised and illegal and the petitioners were called upon to quit, vacate and deliver vacant possession of the premises. On June 11, 1963, respondent No. 3 made an application to the Registrar for a reference under s. 93 of the Act. In para 5 of the application it is stated that respondent No. 4. had deliberately with a view to frustrating a part of the claim of the Bank made an attempt to create tenancies in respect of the said premises or otherwise part with possession of the premises and that the petitioners and other opponents mentioned in the application had no right, title or interest in the pre-

mises. Respondent No. 3, therefore, prayed that the dispute should be decided by the Registrar or his nominee under ss. 91 to 96 to the Act and that the petitioners should be asked to quit, vacate and deliver the premises in their possession. A prayer for compensation was also made. On June 19, 1963, the Assistant Registrar passed an order stating that he was satisfied that a dispute within the meaning of s. 91 of the Act existed and referred it for decision to his nominee. The petitioners then filed a petition on the Original Side of this High Court, in which they have prayed that the order made by the Assistant Registrar referring the dispute for decision under the provisions of the Act should be quashed.

Section 91 of the Act is in the following terms:

> 91. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office-bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of the followings:
>
> (*a*) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;
>
> (*b*) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society.
>
> (*c*) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions of section 45, and any person claiming through such a person;
>
> (*d*) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 45, whether such a surety is or is not a member of the society;
>
> (*e*) any other society, or the Liquidator of such a society.
>
> (2) When any question arises whether for the purposes of the foregoing sub-section, a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.
>
> (3) Save as otherwise provided under sub-section (3) of sec-

tion 93, no Court shall have any jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1.— A dispute between the Liquidator of a society and the members of the same society shall not be referred to the Registrar under the provisions of sub-section (1).

Explanation 2.— For the purposes of this sub-section, a dispute shall include—

(*i*) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant or employee whether such a debt or demand be admitted or not;

(*ii*) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(*iii*) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;

(*iv*) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of conditions of the assignment.

Rule 75 of the rules made under the Act states that a reference of a dispute under s. 91 shall be made in writing to the Registrar in Form P. Sub-section (1) of s. 93 states that if the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of s. 91, the Registar shall subject to the rules decide the dispute himself or refer it for disposal to a nominee or Board of Nominees appointed by the Registrar. Section 96 states that when a dispute is referred to arbitration, the Registrar or his Nominee or Board of Nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute.

The first question, which has been raised in all the three applications, is that the Registrar or the Assistant Registrar was bound to hear the petitioners before making the orders referring the dispute to his Nominees. We have been told that the practice at

present generally followed by the Registrar is that after an application for reference has been scrutinised in his office, he refers the matter to a nominee. If a contention is then raised before the nominee that he has no jurisdiction, because no dispute exists within the meaning of s. 91, the nominee refers back the matter to the Assistant Registrar, who then decides whether a dispute within the meaning of s. 91 exists. This practice has been generally found to be convenient. It also saves time because we were told that only in about 5 to 10 per cent. of cases the nominees' jurisdiction to entertain and decide a reference is challenged. The practice is also supported by several decisions of the Maharashtra Co-operative Tribunal, to which our attention has been drawn. The question which we have to consider is whether this practice is in accordance with law. Sub-section (1) of s. 93 refers to the satisfaction of the Registrar, while sub-section (2) of s. 91 gives finality to the decision of the Registrar. It has been urged that as sub-s. (2) of s. 91 refers to a decision by the Registrar and not to the satisfaction of the Registrar, what sub-s. (1) of s. 93 contemplates is provisional satisfaction of the Registrar arrived at after perusal of the application for reference made to him, but without hearing the parties. The difficulty in accepting this argument is that it is only after the Registrar is satisfied that a dispute within the meaning of s. 91 exists that the Registrar can proceed to decide the dispute himself or refer it for disposal to his Nominee. The jurisdiction of the Registrar or his Nominee to decide a dispute is, therefore, dependent on the Registrar being satisfied that such a dispute exists. The Registrar cannot, however, come to the conclusion that a dispute exists unless he first applies his mind to the matter. The words used in sub-s. (2) of s. 91 are: "When any question arises" and not "when any question is raised". The question whether a dispute exists will arise as soon as the Registrar applies his mind to the matter in order to satisfy himself about the existence of a dispute within the meaning of s. 91. His satisfaction on this point will, therefore, be equivalent to this decision within the meaning of sub-s. (2) of s. 91. If he decides that a dispute exists, then he will take further action under sub-s. (1) of s. 93 to decide the dispute himself or refer it for disposal to his Nominee. It has been conceded before us that the question about the existence of a dispute has to be decided by the Registrar judicially and that the proceeding before him is a quasi-judicial proceeding. This necessarily implies that the Registrar must hear the parties before he decides or satisfies himself about the existence of the dispute. The present practice, therefore, does not appear to

us to be in accordance with law. The correct practice would be for the Registrar to issue notices to both the parties and give them an opportunity of being heard on the question whether a dispute exists. It is only after the Registrar has heard the parties or given them an opportunity of being heard that he can decide or satisfy himself whether a dispute within the meaning of s. 91 exists. It is his decision so arrived at which will be final under sub-s. (2) of s. 91 of the Act.

None of the petitioners was heard by the Assistant Registrar before the order of reference was made. We would, therefore, have remanded the matters to the Assistant Registrar for deciding the question about the existence of a dispute within the meaning of s. 91 after hearing the parties, but we have decided not to do, since the questions raised are general questions, which arise in many cases and also because the parties desire that we should decide them, so that the position in law may be clarified.

Following the decisions of the Supreme Court in *Raizada Topandas* v. *Gorakhram*[6] and *Vasudev* v. *Board of Liquidators,*[7] a Full Bench of this Court has held in *Dattatraya Krishna* v. *Jairam Ganesh,*[8] that in order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. The jurisdiction of the Court should, therefore, be determined at the time of the institution of the suit when the plaint was filed and the plea of the defendant would not determine or change the forum. The same principle must apply in a proceeding under the provisions of the Co-operative Societies Act and the question whether a dispute within the meaning of s. 91 exists so as to enable the Registrar or his Nominee to entertain a reference in respect of such dispute will have to be decided by reference to the averments made in the application for reference made under r. 75.

Under s. 91 it is not every dispute in respect of which a reference can be made for its determination under the provisions of the Act. Two conditions must be satisfied before a reference can be entertained and these are:

(1) That the dispute must touch the constitution, elections of the office bearers, conduct of general meetings, management or business of a society; and

(2) that both the parties to the dispute must be one or other

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[6] (1963) 66 Bom. L.R. 106, S.C.
[7] (1963) 66 Bom. L.R. 205, S.C.
[8] (1964) 66 Bom. L.R. 645, F.B.

of the persons mentioned in cls. (*a*) to (*e*) of sub-s. (1) of s. 91.

In the three cases before us, it has been contended on behalf of the respondents that the disputes touch the business of the societies concerned. The question as to what the words "touching the business of a society" signify has been considered by a Full Bench of this Court in *Farkhundali* v. *Potdar*.[9] At pages 986-987 it was observed:

> . . . The nature of business, which a society does, is to be ascertained from the objects of the society. But whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. The word 'touching' is also very wide and would include any matter which relates to, concerns or affects the business of the society.

The Full Bench has cited with approval the decision of the Full Bench of the Madras High Court in *Madhava Rao* v. *Surya Rao*,[10] that the words "touching the business of the society" must be given their full import and that the dispute need not directly arise out of the business of the society, but it is enough if it has reference or relation to or concern with its business.

The petitioners in the first two applications are in occupation of flats, which belong to Co-operative Housing Societies. Clause (16) in s. 2 of the Act defines a housing society as meaning a society, the object of which is providing its members with dwelling houses. It has been urged by Mr. Vaidya and Mr. Samant that the dispute in each of these two applications is essentially between a member of the society and the person to whom he had given his flat for occupation, that no relief has been claimed against the society, that the society, therefore, not concerned with the dispute and that consequently the dispute cannot be said to touch the business of the society. There is not much force in these arguments. Regulation 4 in Form A in the Model Bylaws is as under:

> No tenant shall assign, underlet, vacate or part with the possession of a tenement or any part thereof without the previous consent in writing of the society.

The Regulations of both the societies, to which the buildings

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[9] (1961) 63 Bom. L.R. 985, F.B.

[10] (1963) Mad. 1047, F.B.

in question belong, contain a similar Regulation. Consequently the flats now in occupation of the petitioners could not have been given to them for occupation without the permission of the societies. The object of a co-operative housing society being to provide housing accommodation to its members, it is the business of the society to see that such accommodation is occupied by its members or by persons approved by it and not by unauthorised persons. Every member is bound by the rules, bye-laws and regulations of the society. In respect of the common amenities provided by the society he has to pay certain charges and expenses to the society. A housing society is, therefore, vitally concerned with the question as to who occupies the accommodation provided by it. A dispute in regard to the occupation of such accommodation is, therefore, a dispute connected with the business of such a society. In any case there can be no doubt that such a dispute will touch the business of the society.

Clause (iv) in Explanation 2 in s. 91 brings within the ambit of this section a dispute arising out of a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land resumed by it for breach of conditions of the assignment. This clause does not refer to a person claiming through a member. It has, therefore, been argued that a dispute, in which possession is claimed from a person claiming title through a member is outside s. 91. The clause provides for a case in which a society seeks possession from a member on account of breach of the conditions on which the land had been assigned to him. In such a case the award, if any, made against the member would be binding on every person claiming through such member. The society can also make such person a party to the application made by it against the member. This position had been made clear by the Supreme Court in *Importers* v. *Phiroze*[11] where it has been observed:

> . . . . under the ordinary law a decree for possession passed against a tenant in a suit for ejectment is binding on a person claiming title under or through that tenant and is executable against such person whether or not he was or was not a party to the suit. The non-joinder of such a person does not render the decree any the less binding on him. It is in this sense, therefore, that he is not a necessary party to an ejectment suit

[11] (1952) 55 Bom. L.R. 271, S.C. at p. 277.

against the tenant. It is, however, recognised that such a person is, nevertheless, a proper party to the suit in order that the question whether the lease has been properly determined and the landlord plaintiff is entitled to recover possession of the premises may be decided in his presence so that he may have the opportunity to see that there is no collusion between the landlord and the tenant under or through whom he claims and to seek protection under the Act (Rent Act), if he is entitled to any. Such a person may be joined as a party to the suit from the beginning of the suit or at any later stage of the suit if the Court thinks fit to do so.

This may be the reason why a person claiming through a member is not mentioned in cl. (iv) of the Explanation. This omission would not, therefore, indicate that a dispute in regard to possession of premises between a member and the person who has obtained the premises from the member is not a dispute within the meaning of s. 91 of the Act.

It was contended that the claim for compensation made against each of the petitioners cannot be said to touch the business of the society of which the particular respondent is a member and that such a claim cannot, therefore, be entertained by the Registrar. A society is ordinarily not concerned with how much amount a member charges to or recovers from the person to whom he has given his tenement for occupation. Even if he gives it free or remits the whole amount payable, it will not affect the society. Consequently, a dispute in regard to rent or compensation payable to a member will not ordinarily touch the business of the society. A claim for *mesne* profits is, however, consequential or incidental to a claim for possession. The Court which has jurisdiction to decide a suit for recovery of possession of property has also jurisdiction to award *mesne* profits until possession has been delivered. This has been so held by the Supreme Court in *Importers* v. *Phiroze,* in which at p. 277 it has been observed:

> . . . The appellant points out that on the face of the plaint the plaintiffs declined to recognise it as a lawful occupant as sub-tenant or otherwise and treated it as a mere trespasser having no lawful claim to the demised flat and, therefore, ...the suit in so far as it claimed compensation from him cannot be said to be a suit for recovery of rent. The last part of the contention need not detain us long, for the suit was undoubtedly one for possession of the flat and the claim for compensation was only incidental and ancillary to the claim

for possession. Jurisdiction to entertain a suit for possession will empower the Court not only to pass a decree for possession but also to give directions for payment of mesne profits until delivery of possession. Such direction for payment of mesne profits is usually an integral part of the decree for possession.

Consequently if the Registrar or his Nominee is competent to entertain the applications for possession made against the petitioners, he will also have jurisdiction to decide the claims for past as well as future *mesne* profits made against them until possession had been given.

In application No. 2048 of 1963 the society has not been made a party to the application for reference made to the Registrar. Mr. Vaidya has, therefore, argued that the dispute cannot be said to touch the business of the society. This argument is without any merit. The nature of the dispute will not change merely because the society has not been made a party to the proceeding. Section 91 itself contemplates that a dispute touching the business of a society may arise between a member and a member or between a member and a person claiming through a member.

In the third application, Miscellaneous Application No. 312 of 1963, the property was transferred to the Bank in part satisfaction of the amount due to it under the award obtained by it against respondent No. 4. The property was, therefore, acquired by the Bank in the ordinary course of its business. Thereafter it was necessary for the Bank to do all things necessary to look after and manage the property. In the course of its management, it evidently considered it necessary or desirable to recover possession from the petitioners. Consequently the dispute in regard to possession of the premises occupied by the petitioners can also be said to touch the business of the Bank.

Mr. Nariman has referred to *Dinkar Wasudeo* v. *Registrar, Co-operative Societies*,[12] in which it was held that the word "dispute" in s. 54 of the Bombay Co-operative Societies Act, 1925, implies some kind of disagreement between the parties concerned, some reference to a legal claim or liability and that the word "dispute" cannot be said to be the same thing as a cause of action or the mere incurring of a liability. Mr. Nariman has contended that the tenancy of the petitioners has not been determined by giving them a proper notice and that consequently the Bank has no legal claim to the possession of the premises. The

[12] (1945) 48 Bom. L.R. 104.

question whether a person has made a legal claim is quite different from the question whether he will be able to establish or prove that claim. At the preliminary stage when the Registrar has to decide the question of jurisdiction, he has only to consider whether the claim as made in the application for reference is a legal claim. In the present case the Bank's claim for possession cannot be said to be not a legal claim. Whether the Bank will be able to prove this claim is a different matter.

The next question, which arises for consideration, is whether the petitioners can be said to belong to one or the other of the categories of persons specified in cls. (a) to (e) of sub-s. (1) of s. 91. None of the petitioners is a member of the particular co-operative society. Every petitioner has acquired his rights from a member of the society. The only clause which would, therefore, be applicable to him is cl. (b), provided he can be said to be a person claiming through a member. There has been a great deal of argument before us as to what these words exactly signify. Mr. Nariman has contended that these words refer to a person who though not a member claims as a member, that is, membership rights, by virtue of some transaction or relationship with a member. Section 22 of the Act mentions the persons who may be admitted as members of a society. Under cl. (b) a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the Societies Registration Act, can be a member of the society. Under cl. (f) a registered public trust can also be a member of the society. Section 29 states that a transfer of or charge on the share or interest of a member in the share capital of a society shall be subject to such conditions as may be prescribed. Sub-rule (1) of r. 24 provides that no transfer of shares can be effective unless it is made as provided in this sub-rule. Sub-section (1) of s. 30 states that on the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the rules, or, if no person has been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member. Sub-rule (1) of r. 25 provides that for the purpose of transfer of his share or interest under sub-s. (1) of s. 30, a member of a society may, by a document signed by him or by making a statement in any book kept for the purpose by the society, nominate any person or persons. Sub-rule (2) of r. 20 states that a society may admit minors and persons of unsound mind inheriting share or interest of deceased members as its members through their legal representatives or

guardians respectively. These provisions deal with transfer of shares and acquisition of rights of membership by inheritance or otherwise. Mr. Nariman has urged that a person can be said to claim through a member only when he claims *qua* a member, that is, when he claims the rights of membership, under these and other similar provisions, on account of transfer of shares to him or as a partner of a firm of which he is a member or as the heir or legal representative of a member or other similar reason.

In *Shyam Co-operative Society* v. *Ramibai*,[13] a charitable trust was a member of the appellant co-operative society. The trust had advanced Rs. 4 lakhs to the society. Subsequently the trustees filed a suit to recover the amount. A notice of motion was taken out by the appellant society to stay the suit on the ground that under s. 54 of the Bombay Co-operative Societies Act the dispute could only be adjudicated upon by arbitration as provided in that section. This notice of motion was dismissed and the order was confirmed in appeal. The relevant part of s. 54 was as follows:

> 54. (1) (a) If any dispute touching the . . . business of the society arises . . . between the society . . . and any . . . member . . . of the society . . . it shall be referred to the Registrar for decision by himself or his nominee . . .
>
> The dispute shall include claims by a society for debts or demands due to it from a member or a past member or the heirs or assets of a past member, whether such debts or demands be admitted or not.

It was held that under this section the dispute must be between the society and a member as a member, that it must relate to a transaction in which the member was interested as a member and that s. 54 would have no application in a case where a member had advanced a loan to a society, which he was under no obligation to advance. At p. 518 the learned Chief Justice observed:

> . . .Now, before a case can fall under s. 54, it is not sufficient that there should be a dispute touching the business of the society. What is further required is that the dispute must be between the society and its member, and proper emphasis has got to be laid upon the expression 'member' used

[13] (1952) 54 Bom. L.R. 517.

in this section. The dispute must be between the society and the member as a member or *qua* a member. It must be a dispute in which the member must be interested as a member. It must relate to a transaction in which the member must be interested as a member.

Thereafter s. 54 was amended and the following words were inserted into the second paragraph in cl. (a) of sub-s. (1) before the words "whether such debtor . . ."

> . . . as well as claims by a member or past member or the heirs of a past member for any debts or demands due to him from the society.

The section as amended came up for consideration in *Malvan Co-op. Bank* v. *Kamalakar.*[14] It was held having regard probably to the words "any debts or demands", that the section as amended applied to a dispute in regard to a loan advanced to a member otherwise than in his capacity as a member. At p. 631 the learned Chief Justice observed:

> . . .Therefore, the Legislature by enacting this second paragraph was extending the scope of a dispute which had been defined in s. 54 (1) . . . . . Therefore, for the purpose of this enlarged definition of a 'dispute', all that is necessary is that there should be a debt or demand due to a society by a member and a claim to be made by a society in respect of that debt or demand. It is unnecessary for the purpose of this enlarged definition that the debt must be due from a member in his capacity as a member or *qua* a member. It is sufficient if there is a debt or a demand due by the member howsoever the debt or demand might arise, provided the debt or demand is due to the society and a claim is made by the society in respect of that debt or demand.

Provisions similar to s. 54 of the Bombay Co-operative Societies Act, 1925, are contained in s. 68 of the Friendly Societies Act, 1896. Clause (a) in sub-s. (1) of this section is as under:

> Every dispute between—
> (a) a member or person claiming through a member or under the rules of a registered society or branch, and the

[14] (1954) 56 Bom. L.R. 629.

society or branch or an officer thereof . . . shall be decided in manner directed by the rules of the society or branch.

It has been held that disputes to be decided under this section must have relation to the membership of the member, such as the repayment of money deposited by a member and that dispute between a society and a member not in his capacity as a member, for example, a claim by a society against one of its officers for misappropriation of funds or a dispute with a member as mortgagor or mortgagee, are not disputes within this clause, see para. 123 at page 65 in Halsbury's Laws of England, Vol. 18, Third edn.

Section 51 of the Madras Co-operative Societies Act, 1932, contains similar provisions about the settlement of disputes between a co-operative society and its members. In *Krishna Ayyar* v. *Urban Bank Ltd., Calicut,*[15] the Madras High Court has held that in order that a dispute can be dealt with by the Registrar under s. 51 of the Madras Co-operative Societies Act, it must be a dispute between the society and a member in his capacity as a member. In that case it was decided that a dispute between the appellant and the Co-operative Bank, of which the appellant was a member, arising out of the matters relating to the appellant's acts as the Bank's Vakil, was not a dispute to which the Act applied and that the Registrar had, therefore, no jurisdiction to deal with the matter. The same view has been taken in *Narayana Ayyar* v. *Co-op. Urban Bank, Ltd.,*[16] and *Vegetols Ltd.* v. *Wholesale Co-op. Stores, Chittoor.*[17] In the last case it was observed that for a claim to fall within s. 51 of the Act, it should be a claim by the society against a member as a member touching the business of the society and that a liability of a member to the society which is not incurred by the member as a member is outside the scope of s. 51.

In these cases, therefore, it has been held that the domestic tribunal set up by the Act has jurisdiction to decide only those cases in which a claim is made by or against a member as a member. These decisions do not, however, support Mr. Nariman's contention that a person can be said to claim through a member only when he claims membership rights.

Mr. Nariman has laid stress on the fact that whereas in the

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[15] (1933) I.L.R. 56 Mad. 970.
[16] (1936) A.I.R. Mad. 81.
[17] (1956) 1 M.L.J. 36.

case of a deceased member Cl. (b) of sub-s. (1) of s. 91 refers to a person claiming through a deceased member, in cls. (i) and (iv) of Explanation 2 the words used are: "Nominee, heir or legal representative of a deceased member." Mr. Nariman has argued that the Legislature has thereby indicated in what sense the word "member" has been used. We are not impressed by this argument. The only persons, from whom a society can recover a debt due to it from a deceased member, are his nominee, and heir or legal representative. These are also the persons who can claim a debt due to a deceased member from the society. Similarly, the persons against whom a society can proceed for obtaining possession of premises allotted to a deceased member are his nominee, or heir and legal representative. An award passed against such persons will also bind the person claiming through the deceased member. Consequently reference to nominee, heir or legal representative in these clauses in the Explanation does not support Mr. Nariman's argument that only a person claiming membership rights can be said to be a person claiming through a member.

In our opinion, there is nothing in the Act or in the rules to justify our giving such a narrow meaning to the expression "claiming through a member" as has been suggested by Mr. Nariman.

Mr. Setalvad has, on the other hand, argued, and his arguments have been adopted by Mr. Naik, that the word "member" in s. 91 should not be interpreted to mean a member acting in his capacity as a member, because otherwise an anomalous position might arise, *viz.*, that while s. 91 will apply when a society has advanced a loan to a person other than a member by reason of cl. (c) in sub-s. (1) of s. 91, it will not apply when the loan is given to a member otherwise than in his capacity as a member. There would have been force in this argument but for the decision in *Malvan Co-operative Bank* v. *Kamalakar*. The first clause in Explanation 2 is substantially in the same terms as the second para. of s. 54 of the Bombay Co-operative Societies Act, 1925, as amended which was construed in *Malvan Co-operative Bank* v. *Kamalakar*. In view of this decision a dispute arising out of a loan advanced to a member by a society will also be a dispute within the meaning of s. 91.

Section 91 is very much wider in terms than the corresponding s. 54 of the Act of 1925. Clauses (c) and (d) bring within the ambit of this section several persons other than members, who enter into transactions with a Co-operative society. Mr. Setalvad has contended that in view of the fact that the special provi-

sions of the Act relating to settlement of disputes have been made applicable to a large number of persons, who have dealings with a co-operative society, the word "member" should no longer be given a limited meaning. Mr. Nariman has, on the other hand, urged that as the Legislature has in cls. (c) and (d) specified categories of non-members who are covered by s. 91 it cannot be said that the Legislature intended to alter the previous position in regard to the meaning which has been given by judicial decisions to the word "member".

It seems to us that the words "claiming through a member" must be given their ordinary meaning, that is, deriving title or rights through a member. At the same time weight must be attached to the word "member" and having regard to the decision referred to above, the title or rights claimed must be those to which a member was entitled or which he could claim by virtue of his being a member. The words "claiming through a member" therefore mean deriving such title or rights through a member as the member possessed or had acquired by reason of his being a member or in his capacity as a member.

In the first two applications, the petitioners have acquired their rights of occupation of the flats in their possession respectively from respondent No. 1 and respondent No. 3 in these applications. These respondents were allotted these flats by the housing societies, of which they were members. As members they were entitled to the allottment of these flats. Consequently, the petitioners in these applications are persons claiming through members within the meaning of cl. (b) in sub-s. (1) of s. 91. The dispute in each application also touches the business of the particular society. Consequently these disputes are disputes within the meaning of s. 91. The order passed in each case by the Assistant Registrar, Co-operative Societies, referring the dispute for decision to his Nominee, is therefore correct.

The rule issued in each application will, therefore, be discharged. No orders as to costs.

The position is different in Miscellaneous Application No. 312 of 1963. The building, a part of which is in occupation of the petitioners, belonged to respondent No. 4. It did not belong to, nor had it been acquired from the Co-operative Bank respondent No. 3, of which respondent No. 4 was a member. The petitioners cannot, therefore, be said to be claiming through a member of the Bank as a member. Consequently cl. (b) will not apply and the disputes between them and the Bank cannot be the subject of a reference under sub-s. (1) of s. 91.

In this view, it is not necessary to consider the other points

raised by Mr. Nariman that after the transfer of the property to the Bank under s. 100 of the Act, the petitioners became direct tenants of the Bank. We have also not heard Mr. Nariman on his other contention that s. 91 is not applicable, as the petitioners are the tenants of the premises.

In this application we, therefore, set aside the order made by the Assistant Registrar referring the dispute between the petitioners and respondent No. 3 to his Nominee for decision. The petitioners should get their costs of this application from respondent No. 3.

We have been told that our interpretation of sub-s. (2) of s. 91 and sub-s. (1) of s. 93 may lead to considerable increase in the work in the office of the Registrar, with the result that proceedings may be considerably delayed. This is, however, a matter for Government to consider. If Government decides to amend the Act, Government may also consider whether the power to decide whether a dispute exists within the meaning of s. 91 should not be vested in the authority to whom the matter is referred for disposal. The words "with whom the society has or had transactions under the provisions of section 45" in cl. (c) s. 91 (1) do not seem to be appropriate to bring out the intention of the Legislature. Section 45 provides:

> Save as provided in the Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed.

It is, therefore, not clear which persons are intended to be covered by the above words in cl. (c) in sub-s. (1) of s. 91. For instance, if no restrictions have been prescribed under s. 45, the question would arise whether all the persons with whom the society has transactions will be within the ambit of cl. (c). Clause (d) refers to a person other than member, who has been granted a loan by the society under s. 45. The section which provides for loans to persons other than members is s. 44. These questions may also be considered in case Government decides to amend the Act.

Orders accordingly.

Comments: It will be noted that this case completely overlooks to consider the aspect of relationship between a member of a Co-operative Housing Society and an occupant who has

been put in possession by such member and their relationship of landlord and tenant under the Transfer of Property Act and the string of cases dealing with the two different types of relationship. Refer *Dr. Manohar* v. *Konkan Co-operative Housing Society,*[18] *and I. R. Hingorani* v. *Pravinchandra Kantilal Shah.*[19] Also commentary in my earlier book at pages 15-18.

The judgment is reproduced below:

Letters Patent Appeal No. 31 of 1963,
against the order of dismissal passed by
Naik Judge in First Appeal No. 673 of 1961
MISS ANINHA D'COSTA
v.
MRS. PARVATIBAI M. THAKUR[20]
Coram: Mr. Justice Patel and Mr. Justice Tulzapurkar
Date: November 25, 1964

PATEL J. This is an appeal by the defendant who has failed in both the Courts in a suit which arose out of the occupation of the suit premises by the defendant apparently as a licensee. The plaintiff is the owner of the flat in suit situated in the Churchgate Co-operative Housing Society Ltd. On November 15, 1959, the defendant was let into possession on her agreeing to execute a document of leave and licence and the document was actually executed between the parties on November 16, 1959. The document is at ex. A. It purported to be for a period of 11 months. In terms of the document an attempt was made to obtain forcible possession without resort to Court, but the plaintiff did not succeed, with the result that the present suit was filed in the City Civil Court at Bombay as a short cause suit for recovery of possession from the defendant on the basis that the licence was ended or terminated. The reliefs claimed were those of mandatory injunctions and Court-fee was paid on the footing that the suit was one for mandatory injunctions. The defendant resisted the suit contending that she was a tenant, that the premises were let out to her as a tenant and that the Court had no jurisdiction as the dispute was one between a landlord and a tenant. She contended that the amount charged

[18] 63 Bom. L.R. 1001.
[19] 67 Bom. L.R. 306.
[20] 67 Bom. L. R. 452 at p. 458.

for the occupation was excessive and that she had already filed an application under the Rent Act for determination of standard rent before the Court of Small Causes at Bombay. She objected to the frame of the suit contending that a suit for mandatory injunctions was not maintainable. The learned trial Judge construed the agreement between the parties as an agreement of leave and licence. He negatived the contentions of the defendant and decreed the suit. Against this judgment, the defendant came in appeal which was heard by Mr. Justice Naik sitting singly. He agreed with the conclusion of the learned Judge of the City Civil Court and dismissed the appeal. Before him, three points were argued by the advocate for the defendant, *viz.* (i) that the frame of the suit was improper and it was not, therefore, maintainable; (ii) that on a proper valuation being made the Court would have no jurisdiction to deal with the suit; and (iii) that the agreement between the parties was one of tenancy and, therefore, the plaintiff was not entitled to any relief. All these three contentions were negatived by the learned Judge.

The learned advocate for the defendant in this appeal has urged the same three contentions before us. His first contention is that the suit for injunctions as prayed for by the plaintiff is not maintainable, inasmuch as the defendant was in exclusive possession of the premises and the plaintiff's remedy was, therefore, to ask for possession of the property. In this contention he is supported by a judgment of the Division Bench of this Court (in which I was a member) in the case of *Lakhiram* v. *Vidyut Etc. Industries*.[21] But in that case we also pointed out that the Court would be entitled to construe the plaint, and if on a fair construction the Court could arrive at the conclusion that what was really intended by the plaint was a claim to possession, then the suit ought not to be dismissed only on the ground that Court-fee had been paid as on an injunction. In view of this judgment, Naik J. construed the plaint and directed the plaintiff to pay the Court-fee which she would have been bound to pay as in a suit for possession on the basis of the value of the property as fixed by him. In our view, the learned Judge was right in the course that he adopted in the matter. This contention, therefore, ought to fail.

The next question is about the market value of the property. Mr. Patel for the appellant invited our attention to the decision of the Division Bench in *S. Sohansingh Chadda* v. *Jitkaur*,[22]

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[21] (1963) 65 Bom. L.R. 604.

[22] (1963) Letters Patent Appeal No. 13 of 1963, decided by Patel and S. M. Shah J. J., on April 3, 1963 (Unrep.)

where we held that ordinarily the market value of the property should be arrived at by taking the licence fee as the return on the property and multiplying it by 12½, *i.e.*, at 12½ years' purchase. While adopting that rule, we made some basic assumptions which we thought would be appreciated by most. But it seems necessary to amplify the reasons for our doing so.

Now, the Court-fees Act is a finance Act. It requires that proper Court-fee should be paid on a plaint in accordance with the nature of the subject matter of the suit. The section which imposes the Court-fee is s. 6 and it deals with a large number of subjects in respect of each of which it prescribes different amounts of Court-fee. In respect of some of the matters, the Court-fee that is required to be paid is proportionate to the market value of the property depending upon the nature of the reliefs claimed by the plaintiff. We do not think it necessary to refer to these sub-sections specifically. Section 8 enables the Court, whenever a question of valuation of the subject-matter of the suit is raised to decide the same and to do so "it may hold such inquiry as it deems proper." The language shows that the manner of inquiry is left to the Court and would depend upon the nature of the subject-matter of the suit. The reason for the giving of this discretion is quite understandable. The valuation of the property for the purpose of Court-fee is not the real dispute between the parties which falls to be decided by the Court, but is only a collateral matter and that is why the strict procedure which applies for decision of suits need not be applied to such an inquiry. In order to reduce its work and not to waste its time in this inquiry, s. 9 enables the Court to appoint even a Commissioner for certain investigation. Section 10 gives some of the powers of a Court under the Civil Procedure Code to either the Court or the Commissioner making the inquiry. This may suggest that the inquiry may not even be regarded strictly as judicial. Thus the section does not prescribe that the Court which makes the inquiry shall follow a particular procedure such as is done by the Bombay Rent Act and the Tenancy Act. An analysis of the provisions of s. 6 of the Court-fees Act shows that in respect of certain kind of property the method of computing the value is laid down and in such cases no difficulty arises. It only arises in other cases where market value is to be determined.

Now, the words "market value" mean the price which a willing purchaser would pay to a willing seller for the property on the day when the suit is filed. The method of valuation is familiar

to most who deal with land acquisition cases. Two methods are very frequently adopted for determining the market value. One is by production of sale deeds of comparable properties in the vicinity of the property in question during the period nearabout the date with respect to which the price has to be determined. The other is by reference to the net income of the property which it earns. One method is used to also check the result arrived at by the other. However, with all the care, the Court cannot determine the exact value. Sometimes, expert evidence is called to state the value of the property, but experience has shown in many cases that the expert for one party will say that the value is Rs. 100 and the expert for the other side will say that it is Rs. 1,000. Though discretion is given to the Court for adopting such procedure as it deems necessary for making the valuation, it has to determine the value of the property fairly though, of course, the same exactness as one may expect under the Land Acquisition Act may not be required. We, therefore, adopted a ready method for determining the value of the property where it is earning income in the above case.

At this stage, it is also desirable to explain why we took only 12½ years' purchase and not longer. If the market value of the property is to be assessed on the basis of the net income, then the number of years' purchase depends on the rate of interest on gold-edged securities. Usually, in respect of non-agricultural income, it has become customary to adopt a rule of 16-2/3 years' purchase upto even 20 years' purchase. But then this method is on the hypothesis that the income is the normal income and is likely to be recovered for a reasonably long period. Now, the licence fees which are earned in the present days are very exorbitant and the good or bad days cannot be expected to last for a considerably long time. We, therefore, took only 12½ years' purchase of the license fee.

The learned Judge says:

> Section 10 of the Bombay Court-fees Act provides the mode and the manner in which the inquiry is to be conducted for arriving at the market value of the property in question. All that section 8 of the Court-fees Act lays down is that the correct valuation of the property is to be arrived at in all cases, where the suit has been wrongly valued by the plaintiff. I do not think that the learned judges intended to lay down a rule, which will have the effect of superseding the provisions of the statute,

the underlying suggestion being that the Court in L.P.A. No. 13 of 1963 laid down a rule contrary to the provisions of the Court-fees Act, which, to say the least, is hardly fair to the learned Judges. It is almost elementary that the function of the Court is to construe and not to legislate. With all respect to the learned Judge, neither s. 8 nor s. 10 lays down any special procedure for the inquiry. As pointed out above, s. 8 only gives discretion to the Court to hold "such inquiry as it deems proper" and s. 10 only confers powers of a Court upon the Court or the Commissioner holding the inquiry. The word "ordinarily" in our judgment in the case referred to is indicative enough. Mr. Lulla for the respondent practically disowend the argument.

Now, in the present case, it is true that in 1954 the plaintiff had paid approximately Rs. 10,000 for this property. But then that was six years before the date when the question arose. Evidently, if the property was being acquired, the plaintiff herself would not have relied upon the purchase price paid by her in view of the fact that the prices of properties in Bombay are rising by leaps and bounds. Even Mr. Lulla while addressing us on the reasonableness of the compensation stated that the prices had risen very high during the six years and in fixing the amount of compensation the price of the property at that date was taken into account. If that is so, we do not see what injustice can there be in applying the rule that we have laid down. It was suggested by Mr. Lulla before the learned Judge that the compensation for the furniture should be assessed at Rs. 75. Before such figure can reasonably be accepted, one must be put on an inquiry as to what is the value of the furniture, because very often furniture is used as a pretext for earning very high compensation and avoiding the payment of taxes to the Municipal Corporation. The Rent Act which defines the word "premises" includes by s. 5, cl. (8) in the word, "any furniture supplied by the landlord for use in such building or part of a building". If that is so, the framers of the Act clearly intended that the furniture should earn only reasonable compensation and not any exaggerated compensation for its use. In the present case, the document between the parties mentions five pieces of furniture—a cupboard, kitchen cupboard, 1 ceiling fan, 2 chairs and 1 bed—and having regard to the fact that we are not valuing the furniture of a millionaire in a palatial flat, the value of the furniture can hardly be about Rs. 1,000 even on a liberal basis. As we said, however, that is a matter of evidence and this is only a conjecture.

However, we do not think that any useful purpose can now

be served by going further into this question. After all, in assessing the market value, one has to some extent enter into the realms of conjecture. The defendant had not raised the question of valuation in the trial Court and raised it for the first time in the Court of appeal. In order to arrive at the net income, the outgoings such as taxes and other charges of which there is no evidence have to be ascertained. In the case decided by the Bench, the licence fee was the net income of the tenant. We do not think, therefore, on the whole, that we will be justified in holding that the market value is more than Rs. 15,000, fixed by the learned Judge.

Even assuming that the value of the property is Rs. 25,000 or more, Mr. Patel is concluded by s. 11 of the Suits Valuation Act, which requires that before a judgment can be set aside on the ground of over—or under-valuation of the property and consequential want of jurisdiction in the Court, it must be shown that prejudice is caused to the appellant. None has been pointed out by Mr. Patel and accordingly his contention must fail.

The third and the most important contention is whether the agreement between the parties creates relationship of landlord and tenant.

It is well to bear in mind the relevant definition in our law. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy the property for a certain time in consideration for a price paid or promised. The price paid is called rent. On the other hand, under s. 52 of the Indian Easements Act, licence is

> . . . . where one person grants to another . . . a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such a right be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license,

the underlying assumption in the case of a licence being that the owner continues to be in possession and control of the property. But this is not all. The attributes of a licence can be seen from some of the subsequent provisions in the Easements Act. By s. 56 a licence except one to attend a public place of entertainment is made non-transferable and it is not exercisable even by servants or agents. By s. 60 the licensor's transferee of the property is not bound as such by the licence. By this section

it is also made revocable except in certain cases. In the case of a licence, therefore, there is something less than a right to enjoy the property in the licensee; it cannot be exercised by servants and agents, is terminable and a transferee of the property is not as such bound by the licence. On the other hand, in the case of a lease, there is a transfer or a right to enjoy the property or in other words the lessee is entitled to enjoy the property. Having regard to the statutory provisions, we think that the test of exclusive possession must be regarded as a very important test of tenancy.

The question has come before Courts since very early times and the test then adopted was that if exclusive possession was given to a party, the agreement between the parties must be regarded as a lease. Difficulties were felt in the application of this principle by reason of the stringent provisions of the Rent Acts and in order to meet these, the test has since been modified. *In Booker* v. *Palmer*,[23] the owner had allowed as a matter of concession the appellant whose home was destroyed to live in one of the cottages belonging to him. The appellant then claimed right of tenancy. This claim was negatived by the Court. The learned Judge said (at p. 676):

> ... Whether or not parties intend to create as between themselves the relationship of landlord and tenant, under which an estate is created in the tenant and certain mutual obligations arise by implication of law, must in the last resort be a question of intention.

It was held there that having regard to all circumstances no tenancy was intended. It is needless in this connection to refer to all the cases, but we may refer to *Errington* v. *Errington and Woods*[24] where after referring to decided cases, Denning L. J. says (p. 298):

> The result of all these cases is that, although a person who is let into exclusive possession is prima facie to be considered to be a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy. Words alone may not suffice. Parties cannot turn a tenancy into a licence merely by calling it one. But if the circumstances and

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[23] (1942) 2 All E. R. 674.
[24] (1952) 1 K. B. 290.

the conduct of the parties show that all that was intended was that the occupier should be granted a personal privilege, with no interest in the land, he will be held to be a licensee only.

In this connection, we may refer with advantage to the case of *Addiscombe Garden Estate Ltd.* v. *Crabbe*[25] wherein the observations of Denning L. J. in *Facchini v. Bryson*[26] to the following effect are referred to. He says (p. 1389):

> .... We have had many cases lately where an occupier has been held to be a licensee and not a tenant. In addition to those which I mentioned in *Errington v. Errington* we have recently had three more, *Gorham (Contractors) Ltd.* v. *Field*[27] *Forman* v. *Rudd*[28] and *Cobb* v. *Lane.*[29] In all the cases where an occupier has been held to be a licensee there has been something in the circumstances, such as a family arrangement, an act of friendship or generosity, or such like, to negative any intention to create a tenancy. In such circumstances it would be obviously unjust to saddle the owner with a tenancy, with all the momentous consequences that that entails nowadays, when there was no intention to create a tenancy at all. In the present case, however, there are no special circumstances. It is a simple case where the employer let a man into occupation of a house in consequence of his employment at a weekly sum payable by him...

The Court held that the relationship was that of a service tenant and landlord and that their relationship was determined by the law and not by the label which they chose to put on it. After citing the case of *Customs and Excise Commissioners* v. *Pools Finance (1937) Ltd.*,[30] the learned Judge proceeds:

> It is not necessary to go so far as to find the document a sham. It is simply a matter of finding the true relationship of the parties. It is most important that we should adhere to this principle, or else we might find all landlords granting licences and not tenancies, and we should make a hole in the

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[25] (1958) 1 Q.B. 513.
[26] (1952) 1 T.L.R. 1386, at p. 1389.
[27] (1952) C.P.L. 266.
[28] Unreported.
[29] (1952) 1 T.L.R. 1037, (1952) 1 All. E.R. 1199.
[30] (1952) 1 T.L.R. 792.

> Rent Acts through which could be driven—I will not in these days say a coach and four, but an articulated vehicle.

If one has regard to the conditions prevailing in Bombay and also at some other places, there can be no doubt about the truism of the remarks. In the city of Bombay, in the case of new premises, the Act practically is non-existent. There are also unscrupulous tenants who make huge profits out of their tenancies by inducting what are called licensees. While, therefore, construing the terms of a document, the Court would not lose sight of the fact that ingenious attempts are made to circumvent the provisions of the statute. Indeed, in such cases, it may even be possible to say that the document is bogus or sham. However, ultimately, as the relationship is determined by law irrespective of the label attached to it by the parties, one need not go so far. It is possible that when exclusive possession is given having regard to the special circumstances mentioned by Denning L.J., it can be said that in a given case a right to enjoy the property was not intended to be transferred or given.

In the case of *Associated Hotels of India Ltd.* v. *R. N. Kapoor*,[31] the question arose before our Supreme Court, in respect of the occupation of two rooms by the respondent which were described as Ladies' and Gents' Cloak Rooms where he carried on the business of a hair-dresser. S. K. Das and Sarkar JJ. held that the rooms let, being rooms in the hotel were excluded from the operation of the Ajmer-Merwara Rent Control Act, 1947. Subba Rao J. dissenting from the above view considered the question whether the relationship was of landlord and tenant. After referring to s. 52 of the Easements Act, the learned Judge in connection with licence says (p. 383):

> ... The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful.

The learned Judge ultimately formulates the test of intention of the parties. In this case the terms of agreement between the parties as said by Subba Rao J. were apparently appropriate for a licence. Yet he was of the opinion that the legal relationship was that of landlord and tenant.

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[31] (1960) S.C.R. 368.

The terms of the agreement in the present case are:

Whereas the Licensor has agreed to grant leave and licence to use and occupy the flat, furniture and fittings for eleven months renewable at the option of the Licensee every eleventh month ... and whereas the said leave and licence ... does not confer on the Licensee any right or title, whether as tenant or sub-tenant, on the following terms:

1. That the Licensee shall pay monthly compensation for use and occupation;
2. that the premises shall be used for residence and business by her and her family;
3. that the Licensee shall deposit Rs. 675/- without any interest for the due performance of the terms and indemnifying the Licensor for loss or damage;
4. that the Licensor shall pay all taxes except the Chowkidar's charges of Rs. 10/- which shall be paid by the Licensee;
5. that if the Licensee fails to observe the terms of the agreement or if she committs any nuisance, the licence shall stand revoked and the Licensor shall have the right to eject the Licensee forcibly;
6. that the Licensee shall not allow any other person to use and occupy the premises except ...;
7. that the Licensee shall not claim any right as a tenant; and
8. that the Licensee shall not make any additions and alterations in the flat without the written permission of the Licensor.

In the present case, there are many circumstances connected with the transaction that have to be considered. The plaintiff had inserted an advertisement in the newspaper that a licence was intended to be granted; but then it is hardly likely that a person who wants to circumvent the provisions of the Rent Act would say that the property is to be leased. The giving of the advertisement, in our view, would indicate that she wanted to give out the property to whosoever was prepared to take it and pay the price. Merely from the language employed in the advertisement, it cannot be inferred that a licence was intended. The second circumstance which emerges from the evidence is that admittedly the services of a broker were employed by the plaintiff. It is obvious, therefore, that the intention was not to accommodate any person who was known to the plaintiff, but to

have anyone who was needy enough to agree per force to the terms proposed by the plaintiff. The employment of the broker must necessarily suggest that the intention was to earn whatever could be earned out of the property and no other. The amount paid to the broker is also not less. This circumstance also, therefore, cannot support the inference that it was because the plaintiff intended to give a license only that she had employed the broker. A fair reading of the agreement between the parties leaves no room for doubt that the flat was given in the exclusive possession of the defendant for the use of herself and the members of her family and its use was intended to be for 11 months. The parties, however, did intend that the term was renewable at the end of 11 months at the option of the licensee. It was, therefore, not a short term accommodation. The learned advocate for the respondent says that as the term appears in the main body of the agreement and not in the subsequent clauses which lay down the terms, it should be held that it was not intended to be acted upon, a contention which found favour with the learned Judge. We cannot agree. As long as the agreement between the parties is clear, the place where the term is to be found cannot matter much. While construing the document, the Court has to consider the whole document and cannot refuse to give effect to a term of the document on the ground that it is placed at one place and not at the other. It specifically says:

> Whereas the said Licensor has agreed to grant the leave and licence . . . for the period of 11 (eleven) months renewable every eleven months at the option of the Licensee . . . the terms and conditions . . . are as follows:

The main and the important term was embodied in that paragraph and the details were worked out in the subsequent paragraphs and it is no wonder, therefore, that we do not find a repetition of that term in the details. To show that licence was intended, a crude attempt is made by adding the recital that "the parties had cordial relations." The evidence of both the plaintiff and the defendant shows that they did not know each other prior to that date. In fact, the plaintiff had inserted an advertisement for finding a person likely to occupy the flat and the defendant was told about the vacancy of the premises by someone who had gone to see the premises for himself but found them to be unsuitable. This recital is untrue and it shows the working of the mind of the broker and that of the plaintiff. In-

deed, the rest of the terms are such as are to be found in most tenancy agreements, the only difference being that instead of rent the occupational charges are described as compensation. No circumstances such as those described by Denning L.J. in the case cited above are disclosed either by the document or by the evidence of the parties. Why then one must construe the agreement between the parties as a licence and allow the evasion of the Rent Act merely because the plaintiff has chosen to apply the label that it is a licence?

Mr. Lulla has very strenuously argued that some of the terms show an intention that licence was intended by both parties and also relied upon the decision in *Ramjibhai Virpal* v. *Gordhandas*.[32] Clause 6 makes possession non-transferable to anyone else; in clause 5 there is a condition that if the defendant commits any act of nuisance the licence shall be deemed to have been cancelled and it would be lawful for the licensor without prejudice to any other remedy to forcibly remove the defendant from the flat; the defendant would have to pay a deposit of Rs. 675 which works out compensation for 3 months and that the monthly payment is called compensation. Evidently, there are leases between landlords and tenants which may prescribe many such similar conditions, but merely because of the existence of such conditions, leases are not converted into licences. Calling the occupational price compensation does not make it a licence. *Ramjibhai Virpal*'s case has no application. The principles formulated there are the same as in other cases and having regard to circumstances in the case it was held that tenancy was not intended to be created.

Mr. Lulla tried to take us through the evidence of the parties and relying on certain statements made by the defendant argued that she also intended that there should be a licence and not a tenancy. Now, one cannot forget the circumstances in which the defendant was. The hardships of finding accommodation in Bombay are well-known. One need not, therefore, wonder at a needy person agreeing to sign whatever document is required to be signed by him so long as he gets the premises and is able to live in the same. The defendant admitted that she agreed to execute the document as desired by the plaintiff as that of a licence, but she said that she was to be tenant. It is true that she has not said that she did so because she was in difficulties. But then this fact cannot be overlooked. Apart from this, as we have stated, oral evidence of prior communings bet-

[32] (1954) 56 Bom. L.R. 365.

ween the parties cannot be allowed to influence the judgment of the Court in deciding the relationship between the parties. See *Bomanji* v. *Secretary of State*.[33] Now, what is to be determined is the legal relationship between the parties and, therefore, what they called it is not much material. Giving our best consideration to the terms between the parties and the surrounding circumstances, we hold that the relationship between the parties was that of landlord and tenant. In view of this conclusion, we must hold that the Court had no jurisdiction to decide the dispute between the parties.

In the result, the suit must fail and is dismissed.

The appeal has been filed in *forma pauperis*. Looking to the conditions of the plaintiff herself, we do not think that we should require her to pay the Court-fee which she ought to pay. We also do not think that the circumstances demand that we should make an order for costs in these proceedings. We, therefore, direct the parties to bear their own costs throughout.

Suit dismissed.

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[33] (1928) 31 Bom. L.R. 256, P.C.

Special Civil Application No. 1001 of 1964
DHARAMCHAND PREMCHAND
v.
THE KOPARGAON TALUKA KAPUS GINNING AND PRESSING SOCIETY LTD.[34]

Coram: The Hon'ble Mr. H. K. Chainani, Chief Justice, and Mr. Justice Kotval.

Date: September 16, 1965.

CHAINANI C. J. Respondent No. 1 is a co-operative ginning and pressing society registered under the Co-operative Societies Act. The society purchases cotton from its members and sells it to other persons. On November 25, 1962, an auction was held by the respondent society. At that auction the petitioners offered the highest bids for three lots of cotton. They also paid Rs. 11,000 in part-payment of the price of the cotton. As the petitioners did not take delivery of the cotton or make further payments, the society approached the Registrar, Co-operative Societies, under s. 91 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the Act, for the dispute being decided under the provisions of the Act. The Registrar referred the dispute to his nominee under s. 93 of the Act. Before the nominee an objection was raised that the dispute did not come within the purview of s. 91 as the petitioners were not members of the respondent society and that consequently the nominee had no jurisdiction to decide it. The nominee referred the matter to the Registrar for deciding the question under s. 91(2). The Assistant Registrar, who heard the matter, was of the opinion that the transactions between the petitioners and the society were under the provisions of s. 45 and that consequently cl. (c) in sub-s. (1) of s. 91 applied to them. He, therefore, held that there was a dispute within the meaning of sub-s. (1) of s. 91 and sent back the matter to the nominee for his decision. That order is being challenged before us. Before this order was made the petitioners had also filed a civil suit against the society for the return of the amount of Rs. 11,000 which they had paid to the society.

Sub-section (1) of s. 91 of the Act provides that notwithstanding anything contained in any other law for the time being in force, any dispute touching the . . . business of a society shall

[34] 68 Bom. L.R. 177.

be referred by any of the parties to the dispute . . . to the Registrar, if both the parties thereto are one or other of persons mentioned in cls. (a) to (e) in this sub-section. The petitioners are not members of the respondent society. The only clause which can apply to them is cl. (c) which is as follows:

> (c) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions of section 45, and any person claiming through such a person;

Section 45 states that save as is provided in the Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed. The word "prescribed" is defined in cl. (21) of s. 2 to mean "prescribed by rules." This section does not empower a society to enter into transactions with persons other than members. It empowers the State Government to make rules prescribing the restrictions under which a society may enter into transactions with non-members. No society can, therefore, enter into any such transaction unless it is in accordance with the prescribed restrictions. The power to enter into such transactions is, however, conferred by s. 36, which states that the registration of a society shall render it a body corporate by the name under which it is registered, with power to enter into contracts and to do all such things as are necessary for the purpose for which it is constituted. No transactions are, therefore, entered into under s. 45. The effect of this section only is to prohibit a society from entering into transactions with persons other than members except in accordance with such restrictions as may be prescribed under this section. Literally construed, therefore, the words "transactions under the provisions of section 45" in cl. (c) of sub-s. (1) of s. 91 convey no meaning. No words in a statute should, however, be deemed to have been used without some purpose and the Court should not hold any words to be redundant unless it is not possible to give any meaning to them. We must, therefore, try and ascertain with what object the above words have been used and what meaning can reasonably be given to them.

Three different constructions of the said words "transactions under the provisions of section 45" have been canvassed before us. The first is that the word "under" should be read as "in accordance with"; transactions effected in accordance with the restrictions prescribed by s. 45 will then be covered by cl. (c). Also where, no restrictions have been prescribed under s. 45, every

transaction between a society and a person other than a member, will come under this clause. The other meaning suggested is that the word "under" should be construed to mean "referred to." Every transaction referred to in s. 45 i.e. every transaction in respect of which restrictions could be imposed under s. 45 will then fall within the scope of cl. (c). The third interpretation—and this is the one which has been urged on behalf of the petitioners—is that only those transactions, in respect of which restrictions have been prescribed under s. 45, can be said to be transactions under the provisions of s. 45. Where no such restrictions are prescribed, cl. (c) of sub-s. (1) of s. 91 will not apply.

The difficulty in accepting the first two views is that the material word used in cl. (c) is "under" and not "in accordance with" or "referred to." Sub-section (1) of s. 91 also contains intrinsic evidence to indicate that all transactions with non-members were not intended to be dealt with under this section. Sub-section (1) of s. 43 states that a society shall receive deposits and loans from members and other persons only to such extent, and under such conditions, as may be prescribed, or specified by the bye-laws of the society. Sub-section (2) of the section empowers the Registrar to impose additional conditions on any society or class of societies. Sub-section (1) of s. 44 states that no society shall make a loan to any person other than a member, or on the security of its own shares, or on the security of any person who is not a member. Sub-section (2) states that notwithstanding anything contained in sub-s. (1), a society may make a loan to a depositor on the security of his deposit. Sub-section (3) invests the State Government with the power to prohibit, restrict or regulate the lending of money by any society or class of societies on the security of any property. The marginal note to s. 45 is "Restrictions on other transactions with non-members." This marginal note and the words "save as is provided in this Act" in the opening part of s. 45, suggest that the transactions referred to in s. 45 are transactions other than those covered by ss. 43 and 44. These three sections between them cover all transactions between a society and a person other than a member. Section 43 deals with deposits and loans received by a society, while s. 44 provides for loans advanced by a society. Section 45 refers to other transactions of a society with a person who is not a member. Persons to whom loans have been advanced by a society are referred to in cl. (c) in sub-s. (1) of s. 91. There is no provision in this section in regard to persons who have deposited moneys with or advanced loans to a society. Mr. Vaidya has, therefore, urged,—and there is force in his argu-

ment,—that such transactions are outside the scope of s. 91. Clauses (d) and (e) in sub-s. (1) of s. 91 are as follows:

> (d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 45, whether such a surety is or is not a member of the society;
>
> (c) any other society, or the Liquidator of such a society.

These three cls. (c), (d) and (e) specify the classes of persons who are not members of a society, disputes between whom and the society are to be determined by arbitration under the provisions of the Act. The fact that the categories of non-members, disputes with whom must be resolved under the provisions of the Act, have been specified in sub-s. (1) of s. 91, makes it clear that the Legislature did not intend that the procedure laid down in the Act should be resorted to in respect of every transaction with a non-member.

There is also some difficulty in accepting the third construction suggested and that is caused by the words "if any" in s. 45. Government is, therefore, not bound to prescribe restrictions under this section. But while this difficulty is undoubtedly there, it seems to us that on the whole this construction should be preferred, having regard to the fact that all transactions with persons other than members were not intended to come within the scope of s. 91. According to Webster's Dictionary, one of the meanings of the word "under" is "suffering restriction, restraint, or control by". It will, therefore, be reasonable to hold that the words "transactions under the provisions of section 45" in cl. (c) in sub-s. (1) of s. 91 mean transactions in respect of which restrictions have been prescribed under s. 45. If no restrictions have been prescribed, the question of applying s. 45 will not arise and in such cases the transaction with a person other than a member cannot be said to be a transaction under the provisions of this section. Where however restrictions have been prescribed, s. 45 will operate and the transactions with persons other than members can only be effected subject to those restrictions. Such transactions will be transactions under s. 45 and disputes arising out of or in connection with such transactions will fall under cl. (c) in sub-s. (1) of s. 91.

It is admitted that no restrictions have been prescribed in regard to transactions of the kind entered into between the petitioners and the respondent society. The dispute between the petitioners and the respondent society cannot, therefore, be the

subject of a reference under s. 91.

Accordingly, we set aside the order made by the Assistant Registrar and direct that the application made by the respondent society for a reference under s. 91 should be rejected. There will be no order as to costs.

In *I. R. Hingorani* v. *Pravinchandra*,[35] we had observed that the words "with whom the society has or had transactions under the provisions of section 45" in cl. (c) in sub-s. (1) of s. 91 do not seem to be appropriate to bring out the intention of the Legislature. Government may, therefore, consider whether the Act should not be amended so as to make clear as to what transactions or class of transactions between a society and a person other than a member of the society will fall within the ambit of s. 91.

Order set aside.

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[35] (1965) 67 Bom. L.R. 306, at p. 317.

Comments: A judgment of vital importance was pronounced by the Supreme Court in the case of *Sugauli Sugar Works (Private) Ltd.* v. *Asstt. Registrar, Co-operative Societies, Motihari,*" [36] under the Bihar and Orissa Co-operative Societies Act, 1935. The provisions of Section 48(1) of the Bihar and Orissa Co-operative Societies Act, 1935, though not identical, are somewhat similar in the scheme in regard to disputes relating to non-members. The decision of the Supreme Court will be of considerable interest and throws a flood of light as to the correct interpretation to Section 91 of the Maharashtra Co-operative Societies Act, 1960. The judgment is reproduced below:

Civil Appeal No. 100 of 1962
SUGAULI SUGAR WORKS (PRIVATE) LTD.
v.
ASSISTANT REGISTRAR, CO-OPERATIVE SOCIETIES, MOTIHARI [37]

Coram: The Hon'ble Mr. B. P. Sinha, Chief Justice, Mr. Justice K. Subba Rao, Mr. Justice N. Rajagopala Ayyangar, Mr. Justice J. R. Mudholkar and Mr. Justice T. L. Venkatarama Aiyar.

Date: March 14, 1962.

SINHA, C. J. This appeal, by special leave, is directed against the order of a Division Bench of the Patna High Court, dated October 30, 1961, dismissing *in limine* the appellant's petition dated October 24, 1961, under Arts. 226 and 227 of the Constitution, being Miscellaneous Judicial Case No. 954 of 1961, for a writ of Prohibition directing the first respondent not to proceed with the Award Case No. 101 of 1961, and a writ of Certiorari for quashing the order of the said respondent, dated September 29, 1961. The appellant is a private limited company, incorporated under the Indian Companies Act, with its registered office at Calcutta. It carries on the business of manufacturing sugar in its factory at Sugauli in the district of Champaran, in Bihar. The first respondent is the Assistant Registrar, Co-operative Societies, Motihari Circle, Motihari, in the State of Bihar; the second res-

[36] A.I.R. (1962) S.C. 1367.
[37] A.I.R. (1962) S.C. 1367.

pondent is the Union of Co-operative Societies, and is registered under the Bihar and Orissa Co-operative Societies Act (B. and O. Act VI of 1935) (to be referred to hereinafter as the Act); the third respondent is the State of Bihar.

(2) On August 14, 1961, respondent No. 2 made a reference under s. 48 of the Act, against the appellant, claiming the sum of Rs. 1,20,809/- odd, as commission and interest for supply of sugarcane during the crushing season 1959-60. The said reference was registered by the first respondent as Award Case No. 101 of 1961, on August 17, 1961. Notice of the said reference was issued to the appellant. On September 26, 1961, the appellant took a preliminary objection to the jurisdiction of the 1st respondent to entertain the reference and to adjudicate upon it, and prayed that the reference be rejected. The first respondent following a decision of the Patna High Court, reported in *Union of India* v. *Registrar, Co-operative Societies, Patna,* ILR 40 Pat 7, overruled the appellant's preliminary objection by his order dated September 29, 1961. Against that order, the appellant moved its application aforesaid before the High Court of Patna. The High Court, following its previous decision aforesaid, summarily dismissed the application. The appellant moved this Court and obtained special leave to appeal from the order of the High Court, dismissing his application. This court granted the special leave on 4-12-1961. The appellant moved this Court for stay, which was finally heard on January 11, 1962, and the Court directed that the appeal be heard peremptorily on February 15, this year. That is how the matter comes before us for hearing of the main appeal.

(3) The only question for determination in this appeal is whether, under the provisions of the Act, the first respondent had jurisdiction to hear and determine the dispute referred to him at the instance of the second respondent. The answer to the question raised in this appeal must depend upon the interpretation of the provisions of the Act.

(4) Before examining the provisions of the Act, as it stands at present, it is necessary to set out the legislative history of the law on the subject. When the co-operative movement was set up in the beginning of this century, the law governing co-operative societies was enacted as The Co-operative Societies Act (II of 1912), by the Indian Legislature. That Central Act continued in force in Bihar and Orissa until it was repealed by the Bihar and Orissa Co-operative Societies Act (B. and O. Act VI of 1935), after obtaining the previous sanction of the Governor-General, under sub-s. (3) of s. 80-A of the Government of India Act. The

Act of 1935 was enacted with a view to consolidate and amend the law relating to co-operative societies in the Province of Bihar and Orissa, as it then was. As it displaced the Co-operative Societies Act of 1912, so far as the Province of Bihar and Orissa was concerned, s. 5 enacted that all references to the Co-operative Societies Act, 1912, occurring in any enactment made by any authority in British India, and for the time being in force in the Province, shall be construed as references to the new Act. Under s. 7, a society, which has as its object the promotion of the common interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operation of such a society, may be registered under the Act. On such registration, the Society becomes a body corporate with perpetual succession and a common seal, and with power to acquire and hold property, to enter into contracts, to institute and defend suits, etc. Under s. 15, a registered society shall receive deposits and loans from members and non-members only to such extent and under such conditions as may be prescribed. Under s. 16, ordinarily a registered society shall not make a loan to any person other than a member, except with the general or special sanction of the Registrar, and subject to such restrictions as he may impose. Section 17 further provides for such prohibition and restrictions, in respect of the transactions of a registered society with persons other than members, as the Provincial Government may by rules prescribe. Section 48 makes it obligatory that any dispute touching the business of a registered society, among members, past members, persons claiming through members, past members or deceased members, and sureties of members, past members or deceased members, whether such sureties are members or non-members or between them and the registered society, shall be referred to the Registrar. By virtue of Explanation (1) to the section, a claim by a registered society for any debt or demand due to it from a member or a past member or his heir or legal representative, or from sureties, whether they are members or non-members, shall be a dispute within the meaning of the main section, even though such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

(5) It will thus be seen that the Act is limited in its operation to registered societies and their members in their dealings with one another. It is only in exceptional cases of borrowing by a registered society from non-members, in accordance with the rules and bye-laws prescribed by the competent authority, or

in case of loan to a non-member under the provisions of s. 16, that there could be dealings between registered societies and non-members, keeping aside the cases of sureties of members, who may be non-members, but who also come within the purview of dealings between a society and its members.

(6) Such were the relevant provisions of the Act when it was amended by the Bihar Co-operative Societies (Amendment) Act, 1942, and the Bihar Co-operative Societies (Amendment) Act, 1944, enacted by the Governor of Bihar in exercise of the powers assumed to himself by the Proclamation dated November 3, 1939, issued by him under s. 93 of the Government of India Act, 1935. For our purposes, it is only necessary to notice some of the amendments made by the amending Act of 1944 (Bihar Act X of 1944). By s. 2, Cl. (c) of s. 2 of the Act of 1935 was substituted in these terms:

> (c) 'financing bank' means a registered society the main object of which is to make advances in cash or kind to other registered societies or to agriculturists who are not members of registered societies or to both such societies and agriculturists.

By s. 3, s. 16 of the Act 1935 was amended by adding sub-s. (3) to s. 16, as under:

> (3) Where the Registrar has accorded sanction to a financing bank under the provisions of sub-section (1), a registered society which is a member of such financing bank may, subject to the terms of the sanction and such other terms and conditions as may be prescribed by the Registrar, act as agent for the financing bank and as such agent carry out, with or without any commission, all or any transactions connected with loans or advances made or to be made by the financing bank.

A consequential change was made in s. 23 of the Act of 1935, by inserting s. 23-A, so as to make a debt or an outstanding demand to a registered society from a non-member a first charge on the property of the non-member. The most important amendment was made by s. 6, in s. 48 of the main Act, as follows:

> (6) In sub-section (1) of section 48 of the said Act—
> (a) after clause (d), the word "or" shall be inserted and thereafter the following clause shall be inserted, namely—
> (e) between a financing bank authorised under the provi-

sions of sub-section (1) of section 16 and a person who is not a member of a registered society; and

(b) in Explanation (1), after the words "from a member," the word "non-member" shall be inserted and after the words "of a deceased member" the words "or non-member" shall be inserted.

(7) It is not necessary to refer to the other consequential amendments made and the addition of a new chapter 7A, relating to the manner of recovery. The amendments effected by the amending Act of 1944 had been enacted by the Governor of Bihar in exercise of his special powers aforesaid. The provisions of those amendments were re-enacted as Act XVI of 1948. We would, therefore, refer hereinafter to the amendments in question as the amendments of 1948.

(8) As already indicated, a Division Bench of the Patna High Court has laid it down, in the case of ILR 40 Pat 7 that the Explanation to s. 48(1) of the Act covers a claim by a registered society for any debt or demand from a non-member, and that, therefore, the claim of a registered society against the railway company for compensation for short supply is a dispute within the ambit of s. 48 of the Act, and that, therefore the Assistant Registrar, Co-operative Societies, had jurisdiction to determine the dispute under s. 48(2) of the Act. Relying upon that decision, the High Court dismissed the appellant's petition under Art. 226 and 227 of the Constitution, *in limine*. The appellant has questioned the correctness of that decision. The question, therefore, is whether the High Court has taken a correct view of the provisions of s. 48, the relevant portions of which are as follows:

48(1) If any dispute touching the business of a registered society.....arises—

(a) amongst members, past members, persons claiming through members, past members or deceased members and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member or sureties of members, past members or deceased members, whether such sureties are members or non-members, and the society, its managing committee or any officer, agent or servant of the society; or

(c) ....

(d) ....

(e) between a financing bank authorised under the provisions of sub-section (1) of section 16 and a person who is not a member of a registered society; such disputes shall be referred to the Registrar.

....

Explanation 1.— A claim by a registered society for any debt or demand due to it from a member, non-member, past member or the nominee, heir or legal representative of a deceased member or non-member or from sureties of members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

....

....

(9) Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2), shall be final.

(9) From the provisions of the Act, set out above, it is manifest that the Act created a special tribunal, namely, the Registrar of Co-operative Societies, to deal with certain disputes specified in s. 48 (1) (a) to (e). This special tribunal was created with a view to shortening litigation and providing speedy relief to registered societies and their members in their disputes *inter se* in respect of the business of the society. Before the amendments introduced by the Act of 1948, the disputes which could be entertained by the Registrar were disputes amongst members, past members or their heirs or their sureties or between a society and its officers, agents or servants, or between a society and other registered societies (without meaning to exhaust all the categories). But, before the amendments, one who was not a member of society or was not claiming through a member or a past member or a deceased member, or was not a surety of a member or a deceased member, was not subject to the jurisdiction of the Registrar under s. 48. That is to say, any dispute between a society or its members, past members or deceased members or sureties of such members on the one hand and non-members on the other was not within the purview of the section, so that the appellant company, which is not a registered society

or a member of a registered society, could not have its claim, or a claim against it by a registered society, referred to the Registrar for decision, under this section. Such a dispute by a society or its members against a non-member had to be taken to the ordinary courts for decision.

(10) In our opinion, the contention raised on behalf of the appellant is correct. By the amending Act of 1948, the aforesaid relevant and important amendments were introduced into the Act. The effect of these amendments is that a claim by a financing bank against a non-member to whom the former may have made an advance in cash or kind, with the sanction of the Registrar under s. 16 (1), would be entertainable by the Registrar, on a reference. But that does not mean that a claim which is not of the description referred to in s. 16 (1), read with s. 2(c), by a registered society against any non-member, who is not an agriculturist, is within the purview of s. 48(1), read with the Explanation. The Explanation cannot be read as adding a new head to the categories (a) to (e) under s. 48(1), of disputes which may be referred to the Registrar. Originally, the Explanation had been added only to make it clear that even if a debt or a demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment, the dispute would come within the purview of the main s. 48(1). The addition of the word 'non-member', by the amending Act of 1948, to the first Explanation has not enlarged the scope of the main s. 48(1) so as to make all kinds of disputes between a registered society and a non-member cognizable by the Registrar, thus excluding the jurisdiction of the ordinary courts.

(11) In the instant case, it is manifest that the dispute is between a registered society, the second respondent, and the appellant, a non-member, in respect of the claim for commission and interest thereon for supply of sugarcane, and the appellant alleges that it has a counter-claim of a lakh and fifty thousand rupees for short and irregular supply of sugarcane against that respondent. These are matters which, in our view, are wholly beyond the purview of S. 48 of the Act, when it is remembered that the second respondent is not a financing bank and that the appellant is not an agriculturist to whom any advances in cash or kind had been made or could have been made so as to bring the appellant within the purview of s. 48(1) (e) and consequentially of Explanation 1. The decision of the Patna High Court to the contrary is, therefore, not correct.

(12) In the result, the appeal is allowed with costs, and it is directed that the Registrar should not entertain the reference,

and should not adjudicate upon the dispute, and not make an award. The main contesting parties must be left to their remedies in the ordinary courts.

Appeal allowed.

Special Civil Application No. 1815 of 1964
OMPRAKASH GOWARDHANDAS SINGHANIA
v.
G. V. KOIMATTUR [38]
Coram: The Hon'ble Mr. H. K. Chainani, Chief Justice, and Mr. Justice Kotval.
Date: September 13, 1965

CHAINANI C. J. The petitioners are members of a Cooperative Housing Society, opponent No. 2. Their mother was allotted a plot by the Society. This was subsequently transferred to the petitioners. The bye-laws of the Society were amended and a new bye-law No. 11A was added. This bye-law empowers the Society to forfeit a plot, if the member, to whom it is allotted, does not start construction of a house on the plot and does not complete the work of construction within the period mentioned in this bye-law or such further period as may be approved by the managing committee on valid grounds. Under this bye-law the petitioners' plot was forfeited by the Society. The petitioners then raised a dispute before the Registrar under s. 91 of the Maharashtra Cooperatives Societies Act. In their application they prayed that bye-law 11A should be declared to be *ultra vires* of the provisions of the Act, otherwise bad in law and not binding on the petitioners and also that the forfeiture of their plot was bad in law, void and not binding on them. They also claimed other incidental reliefs. The first bye-laws made by a Society require the approval of the Registrar under s. 9 of the Act. Under s. 13 no amendment to the bye-laws shall be valid until it is registered by the Registrar. The Assistant Registrar, who considered the petitioners' application, was of the opinion that the petitioners were challenging the approval to the bye-law by the Registrar, that the Registrar's nominee had no jurisdiction to change the bye-laws by declaring them as *ultra vires* and bad in law, once they were registered by the registering authority and that the matter could not form the subject of a dispute under s. 91. In regard to the other reliefs sought by the petitioners, he was of the opinion that they could file a separate plaint seeking those specific reliefs. He, therefore, rejected the petitioners' application to refer the matter to arbitration under s. 91 of the Act.

Sub-section (1) of s. 13 of the Act provides that no amendment to the bye-laws of a Society shall be valid until registered

[38] 68 Bom. L.R. 176.

under the Act. Sub-section (2) of the same section lays down that when the Registrar registers an amendment of the bye-laws of the Society, he shall issue to the Society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered. Sub-section (1) of s. 152 makes provision for an appeal against the order of the Registrar under s. 13. Sub-section (4) of this section as recently amended states:

> Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final but be subject to such revision provisions.

It has been contended by Mr. Soni that it was open to the petitioners to appeal against the order of the Registrar registering the amendment by which bye-law 11A was added, and that as they did not do so, the order of the Registrar registering the amendment has become final and that consequently the petitioners cannot challenge the validity of this bye-law. There does not appear to be much force in this argument. What is made final under subs. (4) of s. 152 is not the amendment which is registered, but the order of the Registrar registering the amendment. A bye-law cannot take effect until it is registered, but if it is otherwise invalid, registration of it will not make it valid. Under sub-s. (1) of s. 9 the bye-laws of a Society must not be contrary to the Act or the Rules. If, therefore, a bye-law is inconsistent with or repugnant to any provisions of the Act, the bye-law will be invalid, even though it has been registered under s. 13. If, therefore, no appeal is filed against the order registering a bye-law, a party affected by it may not be able to contend that the Registrar was wrong in registering the bye-law. In other words, he may not be able to challenge the bye-law on its merits. But there is nothing in sub-s. (4) of s. 152 which prevents a challenge to the validity of a bye-law, after it has been registered.

Mr. Soni has relied on *Keshavlal Kalidas* v. *State of Bombay*.[39] The facts of that case are distinguishable. The dispute in that case was regarded as one about the power of the Registrar to register an amendment. This will be seen from the following

[39] (1954) 57 Bom. L.R. 220.

observation (p. 222):

> In our opinion, the only dispute which really arises is the dispute with regard to the power of the Registrar to register the amendment under s. 16 and s. 54 does not contemplate a reference to arbitration when there is a dispute between a member and the Registrar.

In the present case, however, what the petitioners are challenging is the validity of a bye-law for the reasons given by them in their application. Moreover, the main relief claimed by the petitioners is that the forfeiture of their plot by the Society was illegal and invalid. A dispute in regard to such a matter can be the subject matter of a reference under s. 91. For the purpose of deciding this question an incidental question will have to be decided whether bye-law 11A was or was not valid. Such a question, a decision of which is necessary for deciding the main dispute between the parties, can also be gone into by the Registrar.

In our opinion, therefore, the Assistant Registrar was wrong in declining to refer the dispute to arbitration, under the provisions of the Act. We set aside his order and direct that he should entertain the reference under s. 91 and either decide the dispute himself or refer it to a nominee under s. 93 of the Act. Interim injunction to continue for one month more.

No order as to costs.

Order set aside.

HIGH COURT
O.O.C.J.
Miscellaneous Petition No. 217 of 1962.
N. N. GAMADIA AND OTHERS
v.
THE STATE OF MAHARASHTRA AND OTHERS

Coram: Mr. Justice Mody
Date: December 3, 1965

MODY J: This is a Writ Petition under Article 226 challenging the validity of a Notification issued under section 4 of the Land Acquisition Act, to which I shall hereafter refer as "the said Act". The petitioners are Trustees of a Trust and as such are the owners of an immoveable property bearing Survey No. 738 (part) of Malabar Hill Division, situated at Warden Road, Bombay. The first Respondent is the State of Maharashtra. The second respondent is the Deputy Collector of Bombay who has been appointed to perform the functions of the Collector of Bombay under the said Act. The third respondent is a Co-operative Society registered under the Maharashtra State Co-operative Societies Act, 1925.

The first respondent issued a notification dated 25th October 1961 under Section 4 of the said Act. A copy of that notification is annexed as Ex. B to the Petition. The notification states that the land specified in the Schedule to that notification, being an approximate area of 3,000 sq. yds. out of the petitioners' said property was likely to be needed for the purposes of a society, *viz.*, the third respondent to provide residential accommodation for its members. Thereafter the second respondent issued two notices dated 3rd and 23rd November 1961 under section 4 of the said Act requiring the petitioners to lodge their objections, if any, against the acquisition under the said notification Ex. B. Copies of the said two notices are annexed as Ex. "C" collectively to the Petition. Thereafter the petitioners lodged their objections. The petitioners thereafter filed this Petition on the 21st of May 1962 challenging the validity of the said notification Ex. B and the said two notices Ex. C collectively. The petitioners pray for a Writ of Mandamus, Certiorari, or prohibition or any other appropriate Writ, Order or Direction in respect of the said notification and the said two notices based on the contention that the same are invalid in law.

Mr. Sorabji, the learned Counsel for the petitioners, has stated that he does not press prayer (a) in respect of the contents there-

of at the end of it, beginning with the words "and not to issue or make any declaration under section 6 ....." till the end of that prayer and that those words may be treated as deleted from prayer (a). I am therefore proceeding with this petition on the basis as if those words are deleted from prayer (a).

The second respondent has filed an affidavit in reply, in which the second respondent has raised an objection of a preliminary nature. That objection is that the Petition is premature since the first respondent has not yet taken a decision whether to acquire the land in question for the third respondent or not, that preliminary investigations have yet to be made, that only thereafter would a section 6 notification, if any, be issued containing a firm declaration as to acquisition and that unless and until notification under section 6 is issued it is premature to challenge the notification under section 4 because it is open to the first respondent to withdraw that notification. The second respondent has also stated in his affidavit that the object of the third respondent is to meet the housing needs of its members by co-operative means, that the formation and operation of such co-operative housing Societies have the effect of alleviating the acute housing shortage prevailing in the City of Bombay and that the acquisition of land for the use of such Societies for a public purpose. The affidavit contains a further statement that it is true that the third respondent Society had been formed and exists for the benefit of its members only, that there is no restriction on the number of its members and that the membership is open to all persons. According to the second respondent, nonetheless, the third respondent is engaged in work which is for a public purpose and land can be acquired for the third respondent under clause (aa) of section 40, sub-section (1) of the said Act. The second respondent has contended that the purpose for which the impugned notification is issued is covered by section 40(1) (aa) of the said Act and was therefore valid.

Affidavits in reply have also been filed on behalf of the first and the third respondents. It is not necessary for me to refer to the contents of these two affidavits save for recording that Mr. Mistree, the learned Counsel for the third respondent, stated that the statement contained in paragraph 13 of the affidavit of Shripad Narhar Sapre dated 8th April 1965, *viz*: "None of the members has housing accommodation of his own within Greater Bombay" was intended to mean that no member of the Society owns any immoveable property in Bombay having residential accommodation.

In support of its contention that the petition is premature, Mr.

Joshi, the learned Counsel for the first and the second respondents, relied, *inter alia*, on my own Judgment dated 26th November 1965 in Miscellaneous Petition No. 444 of 1963 (*Messrs. India Finance and Construction Co. Pvt. Ltd. and anr.* v. *Kamlakar Thakur and ors.*). In that case also what was challenged was the notification under section 4 of the Land Acquisition Act, the acquisition was for a Company and a preliminary point had been taken that the petition was premature. Mr. Joshi relied, *inter alia*, on the following passage:

> Of course, in some cases, which may be referred to as the first category of cases, it would be clear even at that early stage that it would be a "public purpose" as used in relation to a Company. In another or a second category of cases at that early stage it may only appear to be so, but would require further consideration under section 40 and making provision of terms under section 41 to make it finally and effectively a public purpose as understood in connection with acquisition for a company. But in still another, *i.e.*, a third category of cases, the public purpose mentioned in the section 4 notification may be clearly such that the proposed work can never be useful to the public or it may not at all be possible to secure its use to the public as of right even by insisting on an agreement under Section 41. To illustrate this third category, suppose the public purpose for acquisition in relation to a company be for a swimming pool for the use of a director or directors of the company. In such a case the limitation of the use to a director or directors of the company of necessity excludes any benefit whatever to the public and therefore leaves no scope for any more consideration under section 40 or for the imposition of any terms for the benefit of the public under section 41.
>
> In cases falling under the first category envisaged above, there can never be a successful challenge to the section 4 notification on the ground of want of public purpose as used in connection with a company, nor would any reasonable person make any such challenge. In cases falling under the second category, the challenge of that nature must wait till the stage of a notification under section 6 and in that category of cases it would be premature to make the challenge at the stage of the section 4 notification. In cases, however, falling under the third category there would not be any question of waiting after the section 4 notification and the section 4 notification itself can be challenged on

the ground of want of 'public purpose'.

Mr. Joshi contended that the notification Ex. B herein falls within the second category of cases contemplated by me in my said judgment and that the petition is therefore premature.

Mr. Sorabji contended that the purpose of the acquisition as mentioned in Ex. B is not a public purpose in relation to a Company as required by the said Act as it stood at the date of Ex. B, that is, prior to the amendments made therein by the Land Acquisition Amendment Act (31 of 1962). He contended that therefore Ex. B. was invalid and was a nullity at the date of its issue. He contended that as the notification Ex. B was intrinsically invalid when made it is incapable of being subsequently validated by any proceeding taken after its date under section 41 or 6 of the said Act. He contended that its invalidity is in no way removed or mitigated against by the Amending Act because the amendments made by it apply only after the date of the Amending Act, that is, its provisions are prospective and not retrospective, save those of section 7 thereof, but that section 7 does not apply in this case. He contended in conclusion that not only is the petition not premature but that the reliefs prayed for by the petition must be granted.

Now the acquisition is for a Society, that is, for a Company. The acquisition must therefore comply with the provisions of Part VII of the said Act. The purpose of the acquisition, from its very nature, is not one falling under section 40(1)(a). Mr. Sorabji contended that it does not fall even under section 40(1)(b) He pointed out that the Supreme Court has held in the first Arora case reported in A.I.R. 1962 S.C., 764 that when the acquisition is for a Company for the purposes of construction of some work, the acquisition would be valid only if the public is entitled to use the work as of right and the benefit to the public is direct and not only indirect. He contended that in no conceivable case could the acquisition contemplated in Ex. B be made to comply with section 40(1)(b) because intrinsically the acquisition is limited and is confined to the members of the third respondent alone and that therefore it is inherently impossible for the public to derive any benefit from or make any use of the building as of right. He further contended that the third respondent society is nothing but a collection of private individuals who have collected together for making profits by engaging in the business of immoveable property. In this connection he relied upon the said admission contained in the second respondent's affidavit in reply that the third respondent

Society has been formed and exists for the benefit of its members only. He referred to the Bye-laws, with the Schedules and Statements attached thereto, of the third respondent which were existing at the date of the registration of the third respondent and also at the date of the filing of this Petition. The Bye-laws, read with the Schedules and Statements attached thereto, show that the object of the third respondent was to construct 36 flats —24 of three bed-rooms and 12 of two bed-rooms, that it had 13 members and that its object in general was to engage in the business of real estate, observing principles of cooperation, for the benefit of its members and in particular of purchase and sale of land and/or buildings etc. The Bye-laws show that the third respondent is to have a share capital, that its shares can be sold, though only to its members and that it can distribute its profits by way of dividend, though not exceeding 6¼ per cent. Mr. Sorabji argued that these provisions show that the object of the third respondent is to make profits for its members as private individuals and that the public will derive no benefit from it. He contended that the proposed acquisition is for a "work" within the meaning thereof under section 40(1)(b) but that the "work" is incapable of use for or by the public and that therefore in this case no question can arise after the section 4 notification of imposing any terms under section 41(5) as to "the terms on which the public shall be entitled to use the work." He contended that even by imposing any such terms, the initial infirmity of the work being incapable of being used by the public cannot at all be removed and that the imposition of such terms would radically change the basic purposes mentioned in the notification Ex. B so as to make it a totally new purpose. According to him, such a change can be brought about only by issuing a new notification.

Mr. Sorabji drew my attention to the unreported Judgment of a Division Bench of our High Court constituted of Tarkunde and Chitale JJ dated 18th April 1962 in Special Civil Application No. 836 of 1961. In that case acquisition under the said Act was challenged. The purpose of the acquisition was "the construction of houses for the members of the Southern Nalegaon Co-operative Housing Society, Nalegaon." The Division Bench held: "In the present case the houses which are to be constructed on the lands proposed to be acquired will be used by members of respondent No. 2 and not by the public. It is, therefore, clear that the proposed acquisition, in so far as it is an acquisition for respondent No. 2, is invalid." Mr. Sorabji also relied on the Judgment of the Supreme Court in A.I.R. 1965 S.

C., 646, *State of West Bengal* v. *Ramkrishna Mission*, Howrah, where the Supreme Court has held that acquisitions for construction of staff quarters of a Company where the staff quarters were meant for occupation by the individual members of the staff could not be held to be for the benefit of a section of the public and would not therefore be held to be useful to the public. Mr. Joshi contended that the concept of public purpose is changing and in modern times it envelopes a progressively widening field. In support, he referred to (1952) S.C.R. 889, *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and ors.* and A.I.R. 1952, 756, *Padayachi* v. *State of Madras*. Mr. Sorabji, however, relied upon the observations of the Supreme Court explaining generally the meaning of "public purpose" in *Somavanti* v. *State of Punjab*, [(1963), 2 S.C.R. 774] occurring at page 795 of the Report, *viz*:

> Broadly speaking the expression "public purpose" would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

In my opinion, the said Judgment of our Division Bench is binding upon me. The facts of the case are not distinguishable from those in this case. Mr. Joshi pointed out that that case was a case of completed acquisition because the notification under section 6 had been issued, whereas in this case only a section 4 notification has been issued. To my mind, that distinction makes no difference to the interpretation of the phrase "public purpose". I, therefore, feel myself bound to hold that the purpose of the acquisition mentioned in Ex. B was not a public purpose as understood in relation to an acquisition for a Company and that the impugned notification Ex. B would therefore be invalid under the law as it existed when it was issued. As the purpose of the acquisition is for the benefit of the members of the Society, a basic and complete change would be a necessity to turn it into a public purpose. The purpose of the work as mentioned in Ex. B does not enable the work to be used by the public directly and as of right. As that infirmity is an initial infirmity, it cannot be removed subsequently by imposing any terms under section 41(5) so as to make the work capable of being used by the public. The validity of Ex. B is therefore of a nature falling within the third category mentioned by me in my said earlier Judgment and is therefore incurable.

Mr. Joshi, however, contended that the validity of Ex. B must

be judged according to the Act as amended by the amending Act. Now it is clear and even Mr. Joshi fairly agreed—that the provisions of section 7 of the Amending Act, though retrospective in operation, apply only to acquisitions completed before the 20th of July 1962 and that therefore the provisions of that section do not apply to the present case.

Mr. Joshi, however, contended that clause (aa) of section 40(1) would apply to the present case. He further contended that the concept of public purpose has undergone a change. After the judgment of the Supreme Court in the first Arora case the Parliament passed the Amending Act. The amendments made by the Amending Act permit acquisitions for co-operative societies. He contended that acquisition for a co-operative society must therefore be held to be an acquisition for a public purpose. Now it is true that the Amending Act was passed to meet the situation which arose as a result of the Judgment of the Supreme Court in the said first Arora case. None of the provisions of the Amending Act, however, except those of section 7 which do not apply in this case, are retrospective in operation. Normally, legislation must be construed as being prospective in its application unless it provides to the contrary. No provision of the Amending Act, except section 7, contains any such contrary provision. The same Amending Act contains section 7 which clearly provides for retrospective operation of the provisions contained in that section. That provision by contrast emphasises that the other provisions of the Amending Act are not retrospective. The validity of the impugned order Ex. B cannot therefore be adjudged on the basis of the provisions of the Amending Act.

Mr. Joshi, however, contended that the object of Ex. B is merely of an exploratory nature. He pointed out that all subsequent proceedings for the actual acquisition will be taken under the Amended Act and the purpose of the acquisition which will be stated in the notification under Section 6 will be the same as that stated in Ex. B, but that as section 6 will be judged according to the amended Act, the notification under section 6 will be valid. He argued that such an inconsistency of holding Ex. B, the notification under section 4, invalid and a notification under section 6 valid must be avoided and Ex. B should therefore be held to be valid. In my opinion, this contention is like putting the cart before the horse. It is the validity of section 4 notification which must first be determined. If it is held invalid, which I do, no notification under section 6 can be issued till it is preceded by a valid notification under sec-

tion 4. Therefore the contingency mentioned by Mr. Joshi of an inconsistency between Ex. B and a future notification under section 6 is incapable of arising at all. Mr. Joshi pointed out that in the said case of the *State of West Bengal* v. *Ramkrishna Mission* the section 4 notification had been issued before the amending Act, the section 6 notification had been issued after the amending Act and the Supreme Court held that in construing the section 6 notification the amendments made by the amending Act would have to be taken into account. Now in that case what was challenged was the section 6 notification. Although the section 4 notification was of a date prior to the amending Act, it does not appear to have been at all contended that section 6 notification should not be construed in the light of the amended Act because section 4 notification was itself bad under the unamended Act. In any event, even if any such argument was in fact advanced, the Supreme Court struck down the whole acquisition in that case on another ground and it may not therefore have considered it necessary to deal with this particular argument.

In the result, I hold that the Petition is not premature. The decision of that preliminary point involves the decision of the Petition on its merits. The Petition, therefore, succeeds. There will therefore be an Order in terms of prayer (a) of the petition but with the portion thereof deemed deleted as stated by Mr. Sorabji. The respondents to pay the Petitioners' costs of this Petition, fixed at Rs. 900/-.

On Mr. Joshi's application I grant the respondents time till 15th January 1966 to implement this Order.

CIVIL APPEAL No. 1 of 1966
THE EVEREST APPARTMENTS CO-OPERATIVE HOUSING SOCIETY LTD.
v.
THE STATE OF MAHARASHTRA[40]

Coram: Mr. Justice K. Subba Rao, Mr. Justice H. Hidayatullah and Mr. Justice R. S. Bachawat
Date: January 18, 1966

HIDAYATULLAH J. In this appeal by special leave we are not concerned with the merits of the controversy between the appellant and respondent No. 4, who are the contesting parties, because only two short questions of law arise for our decision. The appellant is a registered Co-operative Housing Society, registered under the Maharashtra Co-operative Societies Act, 1960 (XXIV of 1961). The Society was promoted by two individuals for the construction of a block of flats in Bombay. Shivdasani (respondent No. 4) claims to have paid the entrance fee, share money and other demands and complains that his membership was wrongly rejected by the Society. The Society denies these statements and the claim. We are not concerned with the details of this dispute. What we are concerned with is this: On being informed of the rejection of his application for membership, Shivdasani filed an appeal under s. 23(2) of the above Act, which was heard and decided in his favour by the District Deputy Registrar, Co-operative Societies, Bombay. The Society filed an application before the State Government for revision purporting to be under s. 154 of the Act. This application was rejected. The Society was intimated this result by the Under Secretary to the Government of Maharashtra (Agriculture and Co-operative Department) and the communication (CAR/1064/426690/C-42, 17th May, 1965) was as follows:

> Sir,
>
> I am directed to state that following the hearing to you by the Deputy Secretary of this Department on 10th March, 1965, in connection with the subject noted above, a note was received in the Department from Shri M. G. Mani, Advocate wherein it was claimed that though an order was final under section 23(3) of the Maharashtra Co-operative Societies Act, 1960,

[40] 68 Bom. L.R. 664.

Government had inherent revisionary powers under Section 154 of the said Act to entertain in such representations against such an order. I am to inform you that the matter has been examined by Government and to state that in such cases orders given under Section 23(3) are final and Government has no revisional jurisdiction in such a matter.

Yours faithfully,
Sd./- (D. A. Ekbole)
Under Secretary to Government.

The Society filed a petition under arts. 226 and 227 of the Constitution in the High Court of Bombay which was also rejected (S.C.A. 1027/65, 30 June, 1965). The High Court passed a short and laconic order which reads:

Government right in declaring no jurisdiction. It is wrong to say that respondent had withdrawn the application voluntarily. Attitude of the Society unjust. Admittedly the promoters were members of Everest Co. and they wanted Rs. 3,000/- from each one for themselves.
Societies are not meant for self-aggrandizement.
No ground to interfere.
Rejected.

It is against the last order that the present appeal has been brought and the first question is whether the Government is right in law in declining to interfere because it has "no revisional jurisdiction in such a matter". The answer to this question depends upon the construction of s. 154 of the Act but before we attempt it, we shall say something about the Act and the provisions applicable to this case.

The Maharashtra Co-operative Societies Act, which replaced the Bombay Co-operative Societies Act, 1925 was passed to provide for the orderly development of the Co-operative movement in the State of Maharashtra. It deals, among others, with housing societies, the object of which is to provide their members with dwelling houses. Every society having as its objects the promotion of the economic interests or general welfare of its members, or of the public, in accordance with co-operative principles and which is economically sound may register under the Act. This entitles the societies to obtain certain benefits. The State Government appoints a Registrar of Co-operative Societies, who has numerous powers under the Act, and may appoint one or more persons to assist him and may confer all or any of the

powers of the Registrar upon them. Chapter II of the Act then deals with registration of societies and all matters connected therewith. Chapter III next deals with members and their rights and liabilities. Section 22 in that Chapter lays down who may become a member of a society and by its second sub-section provides:

> 22. *Person who may become member.* (1) . . .
> (2) Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of the application for admission—whichever is earlier.

Section 23 then gives a right of appeal to a member who has been refused admission. It provides:

> 23. *Open membership.* (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its bye-laws.
> (2) Any person aggrieved by the decision of a society, refusing him admission to its membership may appeal to the Registrar.
> (3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

The appeal of Shivdasani was made under the above section. After the order in appeal was passed by the Registrar, the Society moved the State Government under s. 154 to exercise its powers under that section. It reads:

> 154. *Power of State Government and Registrar to call for proceedings of subordinate officers and to pass orders thereon.* —The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them, except those referred to in sub-section (9) of section 149 for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. If in any case, it appears to the State Government, or the Registrar, that any decision or order or proceedings so called for should be modified, annulled or re-

versed, the State Government or the Registrar, as the case may be, may after giving persons affected thereby an opportunity of being heard pass such order thereon as to it or him may seem just.

The State Government held that it had no jurisdiction as orders given under s. 23(3) were final. Two questions arise here: (i) Is the finality under s. 23(3) subject to s. 154, and (ii) Has a party a right to move the State Government under s. 154?

Mr. Niren De defending the order of the State Government as well as that of the High Court, admits that the State Government has been given a power to call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to it, except those referred to in sub-s. (9) of s. 149, and that as the present is not a matter under s. 149(9), the power could be exercised by Government for the purpose of satisfying itself as to the legality or propriety of the order. In other words, he does not contest that the finality stated by s. 23(3) does not affect the power of the State Government. In making this admission he is clearly right. The Act has provided for appeals in other sections and the decision on appeal is stated to be final. Yet the power of superintendence is given to the State Government in general terms in respect of any inquiry or proceeding with only one exception, namely, the proceedings of the Maharashtra State Tribunal, when the Tribunal calls for and examines the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. By mentioning one specific exception to the general power, the Act has indicated an intention to include every other inquiry or proceeding within the action by Goverment as contemplated by s. 154. Mr. De, however, contends, firstly, that the action by Government is intended to be on its own motion and not by application, and secondly, that the power need not be exercised unless Government itself feels that its exercise is necessary. He refers, by way of contrast, to the opening words of s. 150 where provision is made for review of orders of the Tribunal in these words:

150. *Review of orders of Tribunal.*— (1) The Tribunal may, either on the application of the Registrar, or on the application of any party interested, review its own order in any case, and pass in reference thereto such order as it thinks just:

Provided that, no such application made by the party interested shall be entertained, unless the Tribunal is satisfied that

there has been the discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason:...

Mr. De next submits that this power not being coupled with any duty need not be exercised by Government even if moved to take action, unless Government itself feels inclined. He relies upon *Commr. of Inc. Tax* v. *Tribune Trust, Lahore*.[41] In that case the question was whether s. 33 of the Indian Income-tax Act, 1922, which conferred revisional jurisdiction on the Commissioner established a right to relief on the application of an assessee. It was contended by the assessee in that case that the relief claimed by them under s. 33 was wrongly denied to them. In dealing with this contention Lord Simonds (later Viscount) observed, at page 225 of the report, as follows:

> The fallacy implicit in this question has been made clear in the discussion of the first two questions. It assumes that Section 33 creates a right in the assessee. In their Lordships' opinion it creates no such right. On behalf of the respondent the well-known principle which was discussed in *Julius* v. *Lord Bishop of Oxford*[42] was invoked and it was urged that the section which opens with the words 'The Commissioner may of his own motion' imposed upon him a duty which he was found to perform upon the application of an assessee. It is possible that there might be a context in which words so inapt for the purpose would create a duty. But in the present case there is no such context. On the contrary Section 33 follows upon a number of sections which determine the rights of the assessee and is itself, as its language clearly indicates, intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinates and take the necessary action upon such review. It appears that as a matter of convenience a practice has grown up under which the Commissioner has been invited to act 'of his own motion' under the section and where this occurs a certain degree of formality has been adopted. But the language of the section does not support the contention, which lies at

[41] (1948) 16 I.T.R. 214, P.C.
[42] (1880) 5 App. Cas. 214.

the root of the third question and is vital to the respondent's case, that it affords a claim to relief. As has been already pointed out, appropriate relief is specifically given by other sections: it is not possible to interpret Section 33 as conferring general relief.

Mr. De also relies upon certain passages from *Julius* v. *Bishop of Oxford* (supra) which show the distinction between power which is discretionary in its exercise and power which must be exercised every time the occasion for its exercise arises. He contends in the words of Talbot J. in *Sheffield Corporation* v. *Luxford*: *Same* v. *Morrell*,[43] that the word "May" always means "may" which is a permissive or enabling expression and that there are no circumstances either in the Act or in the facts here, by which it can be said that Government was under a duty to interfere. He submits that the order of Government must be read as indicating the above position and not that it had no jurisdiction.

There is no doubt that s. 154 is potential but not compulsive. Power is reposed in Government to intervene to do justice when occasion demands it and of the occasion for its exercise, Government is made the sole judge. This power can be exercised in all cases except in a case in which a similar power has already been exercised by the Tribunal under s. 149(9) of the Act. The exception was considered necessary because the legality or the propriety of an order having once been considered, it would be an act of supererogation to consider the matter twice. It follows, therefore, that Government can exercise its powers under s. 154 in all cases with one exception only and that finality of the order under s. 23(3) does not restrict the exercise of the power. The word 'final' in this context means that the order is not subject to an ordinary appeal or revision but it does not touch the special power legislatively conferred on Government. The Government was in error in considering that it had no jurisdiction in this case for it obviously had.

There remains the question whether a party has a right to move Government. The *Tribunal Trust* case is distinguishable and cannot help the submission that Government cannot be moved at all. The words of the two enactments are not materially equal. The Income-tax Act used the words *suo motu* which do not figure here. It is, of course, true that the words "on an application of a party" which occur in s. 150 of the Act and in

[43] (1929) II K.B. 180, at p. 183.

similar enactments in other Acts, are also not to be found. But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action, unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which, Government may be interested to intervene. In many statutes, as for example, the two major procedural Codes, such language has not only not inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done, it is for the Court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding. Government may act or may not act; the choice is of Government. There is no right to relief as in an appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err, and that is what Government did in this case.

The order of the High Court in these circumstances overlooked that the Government had denied to itself a jurisdiction which it undoubtedly possessed by considering that the finality of the order under s. 23(3) precluded action under s. 154. The High Court ought to have issued a *mandamus* to Government to deal with the application before it within its jurisdiction under s. 154. That *mandamus* shall now issue to the Government.

The appeal is thus allowed with costs.

Appeal allowed.

PART THREE

PRECEDENTS

ARCHITECTS UNITED
PUNE-411 004.

PRECEDENT NO. 1

THIS AGREEMENT made at Bombay the day of 196 between MESSRS. a partnership firm having its place of business at Road, Bombay 1, hereinafter referred to as 'THE BUILDERS' (which expression shall unless it be repugnant to the context or meaning thereof include the partners or person for the time being constituting or representing the said firm and the survivors or survivor of them and the heirs, executors or administrators of the last survivor and their or his assigns) of the One Part and SHRI/SMT. hereinafter referred to as 'the Flat-Holder' (which expression shall unless it be repugnant to the context or meaning thereof include his/her/their heirs, executors, administrators and permitted assigns) of the Other Part WHEREAS by and under an Agreement for Lease dated 196 made between as Lessor of the one part and (one of the partners of the Builders) as the Lessee of the other part, the Builders obtained the right to the grant of a Lease of a piece or parcel of land or ground admeasuring square yards or thereabouts situate lying and being at , Bombay bearing C. S. No. of Division for a term of 999 years at a monthly ground rent of Rs. AND WHEREAS in pursuance of the said Agreement for Lease, the Builders obtained possession of the said land more particularly described in the Schedule to the said Agreement for Lease dated 196 AND WHEREAS the said leasehold land is free from incumbrances and no one except the partners of the Builders has any right title interest or claim in or over the said leasehold land AND WHEREAS the Builders are constructing on the said leasehold property a building of a basement, ground and nine upper floors, such building being tentatively called ' ' AND WHEREAS the plans and specifications of the said building

have been got sanctioned by the Bombay Municipality AND WHEREAS the Flat-holder demanded from the Builders and the Builders have given inspection to the Flat-holder of the original of such sanctioned building plans and specifications (which the Flat-holder doth hereby confirm) AND WHEREAS the original and duplicate of the said Agreement for Lease dated 196 has been registered at the office of the Sub-Registrar of Assurances, under No. and of Book No. of 196 on 196 and the true copy of the said Agreement for Lease has been inspected by the Flat-holder AND WHEREAS the certificate of title issued by the Builders' Attorneys has been inspected by the Flat-holder (a copy whereof is annexed to this Agreement) AND WHEREAS the Builders will be selling the flats in the said building on what is known as 'Ownership Basis' with a view ultimately that the owners of all the flats, garages, and car parking space in such building should form themselves into a Co-operative Housing Society duly registered under the Maharashtra Co-operative Society's Act, 1960 or they should incorporate a private limited Company with themselves as share-holders and upon the owners of all the flats/garages and open car parking space, in such building paying in full all their respective dues payable to the Builders and strictly complying with all the terms and conditions of their respective agreements with the Builders (in a form similar to this Agreement), the Builders shall obtain the necessary Lease of the said property directly in favour of such co-operative Housing Society or Private Limited Company (as the case may be) or if the Builders have themselves obtained such lease, they will execute an Assignment thereof in favour of such Society or Company AND WHEREAS the Flat-holder has agreed to purchase from the Builders Flat No. on the floor and/or Garage/Car parking space No. on the floor of the said building (hereinafter referred to as 'the said premises') upon and subject to the terms and conditions hereinafter contained.

NOW THIS INDENTURE WITNESSETH that it is hereby agreed by and between the parties hereto as follows:—

1. The Builders shall, under normal conditions, construct a building, as per the said plans, designs and specifications seen and approved by the Flat-holder, with such variations and specifications as the Builders may consider necessary or may be required by any Public Authority to be made in them or any of them but so as not to reduce the total area of the said premises. The Flat-holder hereby consents to such variation.

2. The Flat-holder hereby agrees to purchase the said Flat/

Garage/Car parking space shown on the plan hereto annexed, at or for the price of Rs. (Rupees).

3. The Flat-holder agrees to pay to the Builders the said consideration or purchase price of Rs. as under:

(a) By payment of Rs. as deposit or earsest money on the execution of this Agreement.

(b) By making the following part-payments towards the balance of the purchase price, which part payments shall be made in the manner and by the instalments specified below, within 7 days of the Builders giving to the Flat-holder written notice calling for payment of the said money:—

(i) Rs. on or before
(ii) Rs. on or before
(iii) Rs. on or before
(iv) Rs. being the ultimate balance of the purchase price, against delivery of possession of the said premises.

4. If the Flat-holder commits default in payment of any of the instalments aforesaid on their respective due dates (time being of the essence of the contract), the Builders shall be at liberty to terminate this agreement in which event the said deposit or earnest money paid by the Flat-holder to the Builders shall stand forfeited. The Builders shall, however, on such termination, refund to the Flat-holder the instalment of part payments, if any, which may have till then been paid by the Flat-holder to the Builders, but without any further amount by way of interest or otherwise and on the Builders terminating this Agreement under this clause, they shall be at liberty to sell of the said premises to any other person as the Builders deem fit, at such price as the Builders may determine and the Flat-holder shall not be entitled to question such sale or to claim any amount whatsoever from the Builders.

5. Without prejudice to their other rights under this Agreement and/or in law, the Flat-holder shall be liable to pay interest at the rate of 12 per cent per annum on all amounts due and payable by the Flat-holder under this agreement, if such amount remains unpaid for seven days or more after becoming due.

6. Possession of the said premises shall be delivered to the Flat-holder after the building is ready for use and occupation PROVIDED ALL the amounts due by the Flat-holder under this Agreement are paid to the Builders. The Flat-holder shall take possession of the said premises within seven days of the Builders

giving written notice to the Flat-holder intimating that the said premises is ready for use and occupation.

7. Possession of the said premises shall be delivered by the Builders to the Flat-holder latest by The Builders shall not incur any liability if they are unable to deliver possession of the said premises by the date aforesaid if the completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials or by reason of war, civil commotion or any act of God or if non-delivery of possession is as a result of any notice, order, rule or notification of the Government and/or any other public authority.

8. If for any reason the Builders are unable or fail to give possession of the said premises to the Flat-holder within the date specified in Clause 7 above, or within any further date or dates agreed to by and between the parties hereto, then and in such case, the Flat-holder shall be entitled to give notice to the Builders terminating this Agreement, in which event the Builders shall, within two weeks from the receipt of such notice, refund to the Flat-holder the aforesaid amount of deposit and the further amounts that may have been received by the Builders from the Flat-holder as instalments in part-payment in respect of the said premises as well as simple interest on such amounts at the rate of 9 per cent per annum from the date of receipt till repayment. The Builders shall also pay to the Flat-holder a sum of Rs. 500/- as liquidated damages in respect of such termination. Neither party shall have any other claim against the other in respect of the said premises or arising out of this Agreement.

9. Upon possession of the said premises being delivered to the Flat-holder, he shall be entitled to the use and occupation of the said premises. Upon the Flat-holder taking possession of the said premises he shall have no claim against the Builders in respect of any item of work in the said premises which may be alleged not to have been carried out or completed.

10. Commencing a week after notice is given by the Builders to the Flat-holder that the said premises is ready for use and occupation, the Flat-holder shall be liable to bear and pay all taxes and charges for electricity and other services and the outgoings payable in respect of the said premises in clause (11) hereof.

11. The Flat-holder agrees and binds himself to pay regularly every month, by the th of each month, to the Builders until the lease or Assignment of the said property is executed in favour of a Co-operative Housing Society or a Limited Company as aforesaid and thereafter to the aforesaid Co-operative Housing Society or the Limited Company, as the case may be, the pro-

portionate share that may be decided by the Builders or the Co-operative Society or the Limited Company, as the case may be, for (a) insurance premium (b) all municipal and other taxes and outgoings that may from time to time be levied against the land and/or building, including water-taxes and water charges (c) outgoings for the maintenance and management of the building, common lights and other outgoings and collection charges incurred in connection with the said property and also the Flat-holder's proportionate share of the ground rent payable to the Lessor under the said Agreement for Lease dated 196 or the Lease to be granted in pursuance thereof. The Flat-holder shall keep deposited with the Builders, before taking possession of the said premises a sum of Rs. as deposit towards the aforesaid expenses and outgoings and the legal costs contemplated by clause (22). The said sum shall not carry interest and will remain with the Builders until the lease or assignment is executed in favour of a Co-operative Housing Society or to a Limited Company as aforesaid and on such Lease or Assignment being executed, the aforesaid deposit shall be paid over to the Co-operative Housing Society or the Limited Company as the case may be. The Flat-holder shall also keep deposited with the Builders at the time of taking possession, a sum of Rs. as sharemoney and application/entrance fee. The Flat-holder shall also pay to the Builders at the time of possession a sum of Rs. as the Flat-holder's contribution for 'Office Room' which the Builders will be providing in the building for the office of the Society or the Private Limited Company as the case may be.

12. The Flat-holder shall not use the said premises for any purpose other than as .

13. The fixtures, fittings and amenities to be provided in the said building and in the said premises and the materials to be used in the construction of the said building and the specifications of the said building are those as set out in the Schedule hereunder written and the Flat-holder has satisfied himself about the design of the said building.

14. The Flat-holder shall from the date of possession maintain the said premises at his own costs in a good and tenantable repair and condition and shall not do or suffer to be done anything in or to the said building or the said premises, stair-cases and common passages, which may be against the rules or bye-laws of the Bombay Municipality or any other authority nor shall the Flat-holder change, alter or make additions in or to the said premises or to the building or any part thereof. The Flat-holder shall be responsible for any

breach of this provision.

15. Provided it does not in any way affect or prejudice the rights of the Flat-holder in respect of the said premises the Builders shall be at liberty to sell, assign, transfer or otherwise deal with the right, title and interest in the said leasehold land and/or in the building to be constructed thereon.

16. Nothing contained in these presents is intended to be nor shall be construed to be a grant demise or assignment in law of the said premises or the leasehold land, hereditaments and premises or any part thereof or of the said building thereon or any part thereof.

17. The Flat-holder shall not let, sub-let, sell, transfer, assign or part with his/her/their interest under or benefit of this Agreement or part with possession of the said premises until all the dues payable by him to the Builders under this Agreement are fully paid up and only if the Flat-holder has not been guilty of breach of or non-observance of any of the terms and conditions of this Agreement and until he/she they obtains previous consent in writing of the Builders.

18. The Flat-holder and the persons to whom the said premises is let, sub-let, transferred, assigned or given possession of shall from time to time sign all application, papers and documents and do all acts, deeds and things as the Builders and/or the Co-operative Housing Society and/or the Limited Company (as the case may be) may require for safeguarding the interest of the Builders and/or of the Flat-holders in the said building. If any car-parking space/garage to be purchased by itself, the purchaser shall become only a Nominal member of the Society with no voting rights.

19. The Flat-holder and the persons to whom the said premises is let, sub-let, transferred, assigned or given possession of shall observe and perform all the Bye-laws and/or the rules and regulations which the Co-operative Society at registration may adopt and all the provisions of the Memorandum and Articles of Association of the Limited Company when incorporated and the additions, alterations or amendments thereof, for protection and maintenance of the said building and the flats therein and for the observance and carrying out of the building Rules and Regulations and the Bye-laws for the time being of the Bombay Municipality and other local authorities and of the Government and other public bodies. The Flat-holder and the persons to whom the said premises is let, sub-let, transferred, assigned or given possession, shall observe and perform all the stipulations and conditions laid down by such

Co-operative Housing Society or Limited Company as the case may be, regarding the occupation and use of the building and/or the flats/garage/Car Parking space therein and shall pay and contribute regularly and punctually towards the taxes, ground rent and/or expenses or other outgoings in accordance with the terms of this Agreement.

20. The Flat-holder, along with the other Flat-holders who take or have taken the other flats/garages and car parking space in the said Building, shall form themselves into a Co-operative Housing Society or a Limited Company. On the Co-operative Housing Society or a Limited Company being registered or being incorporated, as the case may be, the rights of the Flat-holders as the Purchasers of the said premises will be recognised and regulated by the provisions of the said Co-operative Housing Society or Limited Company and the Rules and Regulations framed by them, as the case may be.

21. On the completion of the said building and on receipt by the Builders of the full payment of all the amounts due and payable to them by all the Flat-holders of the said building, the Builders shall co-operate with the Flat-holder in forming, registering or incorporating a Co-operative Housing Society or a Limited Company, the rights of members of the Co-operative Housing Society or of the Limited Company as the case may be, being subject to the rights of the Builders under this Agreement and the Lease or Assignment to be executed in be, being subject to the rights of the Builders under this Limited Company is registered or incorporated as the case may be, and all the amounts due and payable to the Builders are paid in full as aforesaid, the Builders shall execute the necessary lease or assignment of the said leasehold property (with the building then standing thereon) in favour of such Co-operative Housing Society or Limited Company, as the case may be.

22. Messrs. , Solicitors of the Builders, shall prepare and/or approve, as the case may be, the Lease or Assignment and all other documents to be executed in pursuance of this Agreement as also the Bye-Laws or the Memorandum and Articles of Association in connection with the formation, registration and/or incorporation of the Co-operative Housing Society or the Limited Company, as the case may be. All costs charges and expenses, including stamp duty, registration charges and other expenses in connection with the preparation and execution of the Lease or Assignment and other documents and the formation, registration or incorpora-

tion of the Co-operative Housing Society or the Limited Company, as the case may be, shall be borne, shared and paid by all the Flat-holders of the said Building, in proportion to the respective area of the respective flats/garages/car parking space and/or paid by such Co-operative Society or Limited Company.

23. The stamp duty and registration charges of and incidental to this Agreement shall be borne and paid by the Flat-holder. The Flat-holder will lodge this Agreement for registration and the Builders will attend the Sub-registry and admit execution thereof, after the Flat-holder informs them the number under which it is lodged.

24. In case security deposit is demanded by the Municipality for the purpose of giving water connection to the said Building, such deposit shall be payable by all the Flat-holders of the building in proportion to the respective area of the flats/garages/car parking space. The Flat-holder agrees to pay to the Builders, within seven days of demand such proportionate share of the Flat-holder of such deposit.

25. If at any time any development and/or betterment charges or other levy are or is charged, levied or sought to be recovered by the Municipality, Government and/or any other public Authority in respect of the said land and/or Building, the same shall be the responsibility of all the Flat-holders of the said Building and the same shall be borne and paid by all the Flat-holders in proportion to the respective floor-area of their respective flats/garages/car parking space.

26. All notices to be served on the Flat-holders as contemplated by this Agreement shall be deemed to have been duly served if sent to the Flat-holder by prepaid post under certificate of posting at his address specified below:

27. The Flat-holder shall pay to brokerage at the rate of 2% of the said purchase price for having brought about the transaction at the time of execution of this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and seals the day and year first hereinabove written.

SIGNED SEALED AND)
DELIVERED by the within-)
named MESSRS.)
in the presence of.)
SIGNED SEALED AND)
DELIVERED by the within-)
named Flat-holder)
in the presence of.)

CERTIFICATE

We have investigated the title to the abovementioned land and have taken searches and have perused the title deeds and certify that in our opinion the same is clear, marketable and free from encumbrances.

, dated this day of 19

(sd)

Solicitors,

SCHEDULE OF BUILDING, SPECIFICATION, FIXTURES FITTINGS AND AMENITIES

(1) The Building will be constructed on Reinforced Cement Concrete Frame Structure.
(2) All the Partition walls will be carried out in 6" thick Brick work with plaster on both sides and with a coat of lime wash.
(3) All Bed Rooms and Drawing Room shall be provided with Ceiling fan.
(4) Entire flooring shall be of superior mosaic tiles with 6" skirting.
(5) Bath-rooms will have flooring and 3'/3" dado completely in light coloured mosaic tiles.
(6) Every bath-room will be provided with WASH BASIN with Chromium finished taps.
(7) GEYSER in one bath-room in each flat will be provided.
(8) LOW DOWN FLUSHING TANK for English type W.C.
(9) CONCEALED ELECTRIC WIRING in all Bed-Rooms, Drawing and Dining Rooms, Balconies, Common Passages, Staircase and Canopy.
(10) Drawing Room and Kitchen will have Domestic POWER PLUGS for radio and cooking.
(11) All fittings for doors and windows will be CHROMIUM plated or Oxidised or of Aluminium.

(12) All main entrance doors will be FRENCH POLISHED OR VARNISHED and fitted with LATCH LOCK, PEEP HOLE and ELECTRIC BELL.
(13) There will be one tap in Kitchen.
(14) R.C.C. raised PLATFORM with heat-resisting tiles and sink in Kitchen.
(15) All the doors will be FLUSH DOORS throughout except Drawing Room, Balcony doors which will be 8' wide and have four glazed shutters.
(16) All Bed-rooms and Drawing Room doors excepting Balcony doors will be fitted with CHROMIUM PLATED handles with locking arrangement in itself.
(17) All water tanks will be plastered with WATER PROOF cement plaster.
(18) All staircase LANDINGS shall have CONCEALED LIGHTING with automatic type switch.
(19) Two automatic Electric LIFTS.
(20) Sufficient number of storage tanks with electrical water pump to assure supply of water FOR 24 HOURS.
(21) Every kitchen will have 3' wide R.C.C. Loft.

ARCHITECTS UNITED
PUNE-411 004.

PRECEDENT NO. 2

THIS AGREEMENT made at Bombay this day of 196 BETWEEN MESSRS. a firm registered under the Indian Partnership Act having their office at hereinafter referred to as "the Builders" (which expression shall wherever the context requires or permits mean and include the partners or partner for the time being of the said firm and/or their respective heirs, executors, administrators and assigns) of the One Part AND Shri/Shrimati/Kumari Indian inhabitant residing at hereinafter referred to as "the Flat-holder" (which expression shall wherever the context requires or permits mean and include his/her heirs, executors, administrators, successors and assigns) of the Other Part.

WHEREAS Shri is a partner in the Builders firm AND WHEREAS the Builders have by a Conveyance dated 196 purchased an immoveable property being piece or parcel of freehold land lying and being at in the Registration Sub-District at Bandra admeasuring sq. yds. or thereabouts more particularly described in the Schedule "A" therein which Deed of Conveyance has been lodged in the office of Sub-Registrar of Assurances at Bombay for registration on 196 under Serial No. (The aforesaid land is hereinafter for brevity's sake referred to as the "said Land").

AND WHEREAS the "said Land" belongs to the Builders and the same stands in the name of aforesaid Shri for and on behalf of the "Builders".

AND WHEREAS the Builders through their aforesaid partner Shri have got approved by the Bombay Municipal Corporation the plans in respect of the building proposed to be constructed on the said Land (The approved

plans for the sake of brevity are hereinafter referred to as "the said Plans"). The said Plans are only in respect of the residential flats and shops. The Builders also proposed to construct garages in the Southern/Northern side of the plot if the plans in respect thereof are approved.

AND WHERAS the Builders have commenced construction of the said proposed building in accordance with the said Plans.

AND WHEREAS the proposed building when completed is to be name as " NIVAS".

AND WHEREAS the "Flat-holder" has taken inspection of the true copy of the Deed of Conveyance dated between Shri and others (therein referred to as "the Vendors") and Shri (therein referred to as "the Purchaser") in respect of the said Land.

AND WHEREAS the Flat-holder has taken inspection of the said Plans.

AND WHEREAS the Flat-holder is desirous of acquiring a flat/shop/garage which is marked and tentatively given No. on floor on the said Plans, upon the terms and conditions hereinafter mentioned. (The aforesaid flat/shop/garage is hereinafter for brevity's sake referred to as the "said Flat/Shop/Garage" respectively.)

NOW THIS AGREEMENT WITNESSETH AS UNDER:-

1. The Builder shall construct the said building consisting of ground and upper floors on the said Land in accordance with the said Plans and/or according to the modification there of necessitated by the circumstances.

2. The Flat-holder hereby agrees to acquire the said Flat/Shop/Garage for the total consideration of Rs.

3. The Flat-holder agrees to pay to the Builders the aforesaid consideration of Rs. as under:

a) 15% of the consideration on or before the execution of this agreement.
b) 10% of the consideration on 1st slab being laid.
c) 10% of the consideration on 2nd slab being laid.
d) 10% of the consideration on 3rd slab being laid.
e) 10% of the consideration on 4th slab being laid.
f) 10% of the consideration on 5th slab being laid.
g) 10% of the consideration on 6th slab being laid.
h) Balance of the consideration against the delivery of possession of the said flat/shop/garage.

4. The Flat-holder agrees to pay to the Builders interest at 9% per annum on all the amounts which become due and paya-

ble by the Flat-holder to the Builders under the term of this agreement from the date the said amount is payable by the Flat-holder to the Builders. Provided that payment of interest shall not save the cancellation of this agreement by the Builders on account of any default committed by the Flat-holder in payment of any amount payable by the Flat-holder to the Builders on due date and/or on account of breach of any of the terms and conditions herein contained, committed by the Flat-holder.

5. On the Flat-holder committing default in payment on due date of any amount due and payable by the Flat-holder to the Builders under this Agreement (including his/her proportionate share of Municipal Taxes and other outgoings) and on the Flat-holder committing breach of any of the terms and conditions herein contained, the Builders shall be entitled at their own option to terminate this agreement, and to forfeit the moneys paid by the Flat-holder under this agreement. Till the property is conveyed to a corporate Body to be formed by the Flat-holders of flats/shops/garages in the aforesaid building the Flat-holder shall be merely a licencee of the Builders in respect of the said flat/shop/garage.

6. The Flat-holder shall be given possession of the aforesaid flat/shop/garage on or about the day of 196 when the building is ready for use and occupation, provided that the Flat-holder has paid to the Builders Rs. being the entire consideration for acquiring the aforesaid flat/shop/garage and all the deposits to be made and the moneys to be deposited by the Flat-holder with the Builders under the terms of this Agreement.

7. The Flat-holder agrees and undertakes to sign all the necessary documents required for the purpose of formation and/or registration of a Co-operative Housing Society or a Limited Company or any Incorporated Body that may be formed by the Flat-holders. Signing and execution of the aforesaid documents by the Flat-holder shall be a condition precedent for occupation of the said flat/shop/garage by the Flat-holder.

8. On the possession of the said Flat/shop/garage being given by the Builders to the Flat-holder he the Flat-holder shall not be entitled to make any grievance regarding any item of work or quality of work or the materials used for construction of the building nor shall he be entitled to make any claim in this behalf nor shall the Builders be liable for the same. The fittings, fixtures and amenities to be made and provided by the Builders shall be as are shown in the Schedule "B" hereto annexed.

9. Nothing contained in this agreement shall be construed, nor shall it be deemed, as a demise in law of the said flat/shop/ garage and/or of the said building and/or of the said Land and/or of any portion thereof in favour of the Flat-holder. It is agreed the Builders shall convey the property by a valid conveyance to a Co-operative Housing Society or a Limited Company or an Incorporated Body that may be formed by the Flat-holders as hereinafter provided. The Flat-holder shall not be entitled to any transfer or demise in his favour in respect of the said flat/shop/garage.

10. After the possession of the said flat/shop/garage is given to the Flat-holder, he/she the Flat-holder agrees and undertakes to pay to the Builders regularly and punctually whether demanded or not at all times his/her proportionate share, on the basis of the Municipal Assessment in respect of the said flat/shop/garage, of all the outgoings in respect of the said flat/ shop/garage, all rates, taxes, dues, duties, impositions, outgoings, burden, water charges, insurance premium, maintenance, common lights charge, repairs, salaries of employees (bill collector, chowkidar, liftman, sweepers etc.) and all other expenses of and incidental to the management and maintenance of the abovementioned building whether the same are imposed levied on or paid by the Builders or their partner Shri . The Flat-holder agrees and undertakes to pay to the Builders the aforesaid proportionate share as fixed by the Builders every month regularly and punctually on or before the 10th day of the month next after the month for which the same are due and payable and shall not withhold the same for any reason whatsoever.

11. The Flat-holder shall before the occupation of the said flat/shop/garage keep and maintain with the Builders the following deposits viz. Rs. 500/- as security for the due payment of his proportionate share of outgoings stated hereinabove and Rs. 501/- towards the share-money and other expenses of incidental to the formation, registration of the Co-operative Housing Society, Limited Company or an Incorporated Body. The said deposits shall not carry any interest. The said deposits shall be transferred by the Builders only to the Co-operative Housing Society Limited, Company or Incorporated Body formed by the Flat-holders as hereinafter provided subject however to the deduction by the Builders of the amounts if any due and payable by the Flat-holders to the Builders under the terms and conditions of this agreement.

12. Until the Builders receive the property taxes bill and

water charges bill in respect of the property the Flat-holder agrees and undertakes to pay to the Builders every month provisionally Rs. 100/- towards the aforesaid outgoings from the date of the occupation of the said flat/shop/garage. After the Builders receive the Municipal property taxes bill and the water charges bill the Flat-holder shall pay his/her proportionate share of the same as stated hereinabove until the property is transferred to a Co-operative Housing Society, Limited Company or an Incorporated Body as and thereafter pay the same to such Co-operative Housing Society, Limited Company or Incorporated Body.

13. That the Flat-holder shall carry out all internal repairs of his/her said flat/shop/garage agreed to be acquired by him/her at his/her cost and maintain it in good condition, state, order and repair and shall observe all the Rules and Bye-laws of the Bombay Municipal Corporation and shall not do or suffer to be done anything in to upon the said building or the said flat/shop/garage which may be against the rules and Bye-laws of the Bombay Municipal Corporation or any other local authorities and he/she shall be responsible to Bombay Municipal Corporation, and/or any other local authorities for anything done in connection with the said building and/or the said flat/shop/garage and shall be liable for the consequences thereof.

14. The Flat-holder shall neither create interest in nor transfer the said flat until the property is transferred to the Co-operative Housing Society or Limited Company or Incorporated Body formed by the Flat-holders as hereinafter provided. The Flat-holder shall be entitled to enter into an Agreement to assign his/her interest in respect of the said flat/shop/garage subject to the terms and conditions of this Agreement provided that he/she has paid to the Builders the entire consideration for acquiring the said flat/shop/garage and the outgoings up to the date of such an Agreement to assign.

15. That the Flat-holder shall be bound to sign all papers and documents and to do all other acts, deeds, things as the Builders may lawfully require him/her to do from time to time in this behalf for safeguarding the property and the interest of other flat-/shop/garage acquirers and/or for formation of and/or joining the Co-operative Housing Society or Limited Company or other Incorporated Body and for transfer of the property to such Co-operative Housing Society or Limited Company or other Incorporated Body.

16. That the Flat-holder shall use the said flat for the purpose of residence only and shall not use the said flat for any

purpose other than for residence, shall use the said shop as a shop for the purpose of retail business only and shall not use it for a factory or for any other industrial purpose, shall use the garage only as garage and for no other purpose except with the written permission of the Builders or the Society, Limited Company or the Incorporated Body when formed.

17. That the Flat-holder hereby agrees to observe and perform all rules and regulations which the said Society, Company or the Incorporated Body may adopt at its inception and from time to time and at all times for protection, maintenance, observing and conforming to the Building rules and the Municipal Bye-laws and regulations in force and for fully and for properly vesting the said property in the said Society, Company or Incorporated Body and for strict observance of the various stipulations and conditions laid down by the said Society, or Company or Incorporated Body respecting the use and occupation of a particular flat/shop/garage by a Flat-holder.

18. That if the Builders are not able to give possession of the said flat/shop/garage to the Flat-holder on account of any reasonable cause, the Flat-holder shall not be entitled to any damages whatsoever, but he/she shall be entitled to receive back the money paid by him/her to the Builders towards consideration of the said flat/shop/garage with interest thereon at 9 per cent per annum.

19. That the Flat-holder shall at no time demand partition of his/her interest in said Land and the Building in any part thereof, it being hereby agreed and declared by the Flat-holder that his/her interest in the said Land and Building is impartible and it is agreed that the Builders shall not be liable to execute any assignment or any other document in respect of the said flat/shop/garage in favour of the Flat-holder.

20. That it shall not be hereafter open to the Flat-holder to dispute the title of the Builders to the said Land and the Building thereon.

21. That the Flat-holder further covenants with the Builders that he/she shall not demolish or cause to be demolished any part of the said building or any part or portion of the same nor will he/she at any time make or cause to be made any new construction of whatsoever nature in the said building or any part thereof nor will he/she make any additions or alterations to the said flat/shop/garage without the previous consent in writing of the Builders or the said Co-operative Housing Society or Limited Company or any Incorporated Body when formed.

22. That the Builders provided they do not in any way

affect or prejudice the right created in favour of the Flat-holder in respect of the said flat/shop/garage under this agreement shall be at liberty to sell, assign or otherwise deal with their interest in the said Land and the Building thereon.

23. That in case any security deposit is demanded by water Department of Municipal Corporation before giving the water connection to the proposed Building, the Flat-holder shall contribute proportionately as determined by the Builders.

24. That the Flat-holder will join and form a Co-operative Housing Society, Limited Company or any other Incorporated Body as the Builders may decide and the Flat-holder agrees to join such Limited Company or Co-operative Housing Society or Incorporated Body. On formation of the Co-operative Housing Society or Limited Company or Incorporated Body and after completion of the building and on receipt by the Builders of the full consideration for all the flats/shops/garages the Builders shall transfer and assign all their right title and intesest in the said Land and the Building thereon in favour of the said Co-operative Housing Society or Limited Company or Incorporated Body, as the case may be, free from all encumbrances. The documents of transfer of the said property shall be prepared by the Attorneys or Advocate of the Builders. All the costs and expenses in connection with formation and/or registration of a Co-operative Housing Society or Limited Company or Incorporated Body as well as the costs of preparing, engrossing and stamping the assignment, transfer, required to be executed by the Builders as well as the Attorneys' or Advocates' charges for preparing or approving such document shall be borne and paid by the Flat-holders and/or members of such Co-operative Housing Society, Limited Company or Incorporated Body, as the case may be.

25. That in case Bombay Suburban Electric Supply Ltd. requires/demands construction of a Sub-station before supplying the necessary Electric/or Domestic load to the proposed Building/Buildings, the Flat-holders shall contribute proportionately as determined by the Builders.

26. That on the execution of this Agreement the Flat-holder shall pay to MESSRS: who have brought about this transaction, brokerage at the rate of two per cent on the consideration hereinabove mentioned.

IN WITNESS WHEREOF the parties hereto have hereunto set subscribed their respective hands this day and year first hereinabove mentioned.

SCHEDULE "A" ABOVE REFERRED TO:
(Description of the Property)

SCHEDULE "B" HEREINABOVE REFERRED TO:

1. The Building is of ground and upper floors with R.C.C. Structure. Well ventilated large rooms and kitchens.
2. Mosaic Tiles in flooring with 5" skirting all round in rooms and kitchens.
3. White glazed tile flooring in Baths and Lavatories with 2'-6" high white glazed tiles dado.
4. All doors will be paca Teak panelled doors or solid commercial type door with iron oxidised hinges and brass fittings and painted three coats. Paca Teak Wood Glazed windows with iron Oxidised hinges and brass fittings and painted three coats with Iron grills. The Main door will however be french polish from outside and fitted inside with latch, peep hole and call bell.
5. 2 Domestic Power point in Kitchen living room or bath. (In all two points).
6. One 48" Ceiling fan in each flat.
7. R.C.C. Platform, wooden shelf and build up sink in Kitchen in each flat.
8. R.C.C. Loft over bath and W.C.
9. Precast Mosaic Treads and Risers in Staircase.
10. Indian made Indian type or European type Water Closets.
11. One Direct Tap, as per Bombay Municipal Corporation Rules, one Overhead Tank Tap in the Kitchen, one overhead tap and shower in bath room in each flat.
12. One Indian made wash Basin 20" x 16".
13. Underground tank with two water pumps.
14. One R.C.C. over tank on the terrace as per Municipal Rules.
15. One Electric point and one plug point in each room having an area of 140 sq. ft. or less. If the area of the room exceed 140 sq. ft. then two electric points and one plug point. One Electric point in each balcony. One common electric point between the W.C. and bath, one electric point in common passage. One electric point in each landing of the Staircase.
16. One 4 passengers Electric Lift.

SIGNED SEALED AND)
DELIVERED by the)
withinnamed Builders)
MESSRS:)
in the presence of:)
SIGNED SEALED AND)
DELIVERED by the)
withinnamed Flat-holder)
Shri)
in the presence of:)

RECEIVED of and from the withinmentioned Flat-holder Shri the sum of Rs: /- (Rupees only) being the part-consideration withinmentioned to be paid by him/her to us on or before the execution of this Agreement.

Witness: WE SAY RECEIVED

Bombay,————————196

Re: Sale of property bearing
S. No.
Situate at

TO ALL TO WHOM IT MAY CONCERN

THIS IS TO CERTIFY that on behalf of the purchaser abovenamed, we investigated the Vendors title to the above property and took searches in the Sub-registry, Court and Public Records and in our opinion their title to the above property is marketable and free from reasonable doubts, claims, demands and incumbrances and accordingly a Deed of Conveyance dated 196 was executed by the Vendors in favour of our client the purchaser abovenamed.

Dated this day of 196 .

Sd/-

ATTORNEYS-AT-LAW

PRECEDENT NO. 3

THIS INDENTURE made at this day of in the Christian year one thousand nine hundred and sixty- BETWEEN of adult inhabitant hereinafter called "the Vendor" (which expression shall mean and include his heirs, executors and administrators) of the One Part AND and all adults inhabitants of hereinafter referred to as "the Confirming Parties" of the Second Part AND THE CO-OPERATIVE HOUSING SOCIETY LIMITED a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960, under No. Bom/HSG— of 1966 having its registered office at Plot No. , Road, , hereinafter called "the Purchasers" (which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the Third Part WHEREAS by a deed of Conveyance dated the day of 19 made and entered into between the Vendor and Shri and such of the Confirming Parties as mentioned therein and registered with the Sub-Registrar of Assurances at Bombay under Serial No. of Book No. on the 19 all that vacant piece or parcel of land or ground admeasuring square yards situate, lying and being at in the registration sub-district of and more particularly described in the Schedule hereunder written was conveyed unto the Vendor AND WHEREAS by an agreement dated the day of 19 made and entered into between the Vendor and MESSRS. BUILDERS a partnership firm having its office at No. , Road, and the said firm agreed to purchase the said plot of land admeasuring about square yards bearing Plot No. , situate at

Road, , for a consideration of Rs. AND WHEREAS by the said agreement it was confirmed that the entire consideration of Rs. was paid by the said firm to the Vendor and the Vendor handed over the possession of the said plot of land to the said firm who were allowed to construct a building thereon as per the plans passed and sanctioned by the Municipality and the Confirming Parties were allowed by the Vendor to sell the various flats in the said building on ownership basis as proposed pending transfer of the said property to the nominee of the said firm AND WHEREAS after entering into the said agreement dated the day of 19 and obtaining possession of the said Plot of Land, the said firm commenced constructing a building thereon consisting of several flats and the Confirming Party entered into agreements with diverse persons in respect of such flats in such building AND WHEREAS the construction of the aforesaid building was completed by the said firm and the said building is now known as " " (the said land together with the building standing thereon being more particularly described in the Schedule hereunder written) AND WHEREAS on the aforesaid building being constructed the said firm gave to the holders of the respective flats in the said building possession of the respective flats as per agreements entered into between the said firm and the individual flat-holders and such flat-holders accepted possession thereof in terms of clause (6) of their respective agreements AND WHEREAS the holders of all the flats in the said building known as " " formed themselves into a Co-operative Housing Society viz. the Purchasers herein AND WHEREAS the Confirming Parties are the present Partners of the said firm Messrs. Builders AND WHEREAS each of the said Agreements which the said firm had entered into with the holders of diverse flats, inter alia, provided that the aforesaid building which the said firm was then constructing would consist of a ground and upper floors initially and that if and when the Municipal Corporation for allowed the erection of a further floor on such building the Confirming Parties would be entitled to do so and the Confirming Parties reserved unto themselves the right to dispose of the flats on such additional floor, viz. the floor, of such building if and when erected and that the said land and the said building consisting of a ground floor and upper floors would be transferred to such Co-operative Housing Society and that such conveyance would contain a condition reserving to the said firm the rights in respect of the said floor as aforesaid

AND WHEREAS the Purchasers being the Co-operative Housing Society formed by the holders of all the flats of the aforesaid building consisting of a ground floor and upper floors known as " " and the said land and building being already in possession of the Purchasers and the full purchase price in respect of the said flats and the said garages in the said building (aggregating to Rs.) having been paid to the said firm, the Purchasers requested the Confirming Parties to procure a Deed of Conveyance from the Vendor in favour of the Purchasers reserving unto the Confirming Parties the right in respect of the floor as aforesaid which the Vendor and the Confirming Parties have agreed to do in the manner hereinafter appearing NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration aforesaid the Vendor doth hereby grant, convey and assure and the Confirming Parties do and each of them doth hereby confirm unto the Purchasers all that piece or parcel of land with the messuages, tenements and the building consisting of a ground floor and upper floors known as " " standing thereon situate lying and being at Road, in the Taluka of the District containing by admeasurement about square yards and more particularly described in the Schedule hereunder written TOGETHER WITH all and singular the said building known as " " consisting of one ground floor and upper floors (which said land, hereditaments and premises are hereinafter referred to for brevity's sake as "the said premises"), courts, yards, areas, ways, compounds, paths, passages, waters, watercourses, sewers, ditches, drains, trees, plants, lights, liberties, easements profits, privileges, advantages, rights, members and appurtenances whatsoever to the said premises belonging or any wise appertaining to or with the same or any part thereof now or at any time heretofore usually held, used, occupied or enjoyed or reputed or known as part or member thereof or be appertaining thereto and also TOGETHER WITH ALL the deeds, documents, writings, vouchers, and other evidence of title relating to the said premises or any part thereof and ALL the estate, right, interest, use, inheritance, property, possession, benefits, claim and demand whatsoever both at law and equity of the Vendor in to and out of or upon the said premises or any part thereof TO HAVE AND TO HOLD the said premises described in the Schedule hereunder written and all and singular and other the premises hereby granted, conveyed and assured or intended so to be with their and other their rights members and appurten-

ances unto and of the use and benefit of the Purchasers for ever SUBJECT nevertheless to the payment by the Purchasers of all rents, taxes, assessments, rates, dues and duties now chargeable upon the same or which may hereafter become payable in respect thereof to the Government or the Municipality AND ALSO subject and reserving the right in favour of the Confirming Parties to erect and put up one further floor (i.e. the floor) on the said building known as " " if and when the Municipal Corporation for allows such erection AND ALSO reserving unto the Confirming Parties the right to dispose of the flats of such additional floor (viz. the floor) if and when erected As Also the right of approach to such floor with the right to lay and connect drains, water and other pipes, electric and other cables, wires and connections and conveniences and all other access through or over the remaining part of such building and land in connection with such floor to be erected by the Confirming Parties, and He the Vendor doth hereby covenant with the Purchasers that notwithstanding any act, deed, matter or thing whatsoever by him the Vendor or any person lawfully or equitably claiming by, from, through, under or in trust for him made done committed or omitted or knowingly suffered to the contrary He the Vendor now hath in himself good right, full power and absolute authority to grant, convey and assure the said premises hereby conveyed and assured and intended so to be unto and to the use of the Purchasers in the manner aforesaid AND it shall be lawful for the Purchasers from time to time and at all times hereafter peaceably and quietly to enter upon, possess and enjoy the said premises described in the Schedule hereunder written and to receive all rents, issues and profits thereof and of every part thereof to and for their own use and benefit without any suit lawful eviction interruption claim and demand whatsoever for or by him the Vendor or by any person or persons lawfully or equitably claiming or to claim by under or in trust for him and that free and clear and freely and clearly and absolutely acquitted, exonerated and for ever discharged or otherwise by the Vendor well and sufficiently saved defended and kept harmless and indemnified of, from and against all former and other estates, titles, charge and encumbrances whatsoever, had, made, executed, occasioned or suffered by the Vendor or any other person or persons lawfully or equitably claiming or to claim by, from, under or in trust for him And further that He the Vendor and all persons having or lawfully or equitably claiming any estate or interest whatsoever in the said premises or any of them or

any part thereof from, under or in trust for the Vendor shall and will from time to time and at all times hereafter at the request and cost of the Purchasers do and execute or caused to be done and executed all such further and other lawful reasonable acts, deeds, things and assurances in the said land hereditaments and premises whatsoever for the better and more perfectly assuring the said premises described in the schedule hereunder written and every part thereof unto and to the Purchasers in the manner aforesaid as by the Purchasers shall be reasonably required AND the Purchasers do hereby covenant with the Vendor and the Confirming Parties that they the Purchasers shall and will at all times hereafter allow the Confirming Parties to erect one further floor viz. the floor on the said building known as " " if and when the Municipal Corporation of allows such erection and the Confirming Parties shall have the right to dispose of the flats on the floor if and when erected and the stamp duty and registration charges are to be borne by the Purchasers' Society.

IN WITNESS WHEREOF the Vendor and the Confirming Parties hereto have set their respective hands and seals and the Purchasers have affixed its Common Seal to the original and duplicate hereof the day and the year first hereinabove written.

THE SCHEDULE ABOVE REFERRED TO:

SIGNED SEALED AND)
DELIVERED BY the within)
named Vendor)
in)
the presence of)

SIGNED SEALED AND)
DELIVERED by the Con-)
firming Parties Shri)
Shri in the)
Shri
and Shri in the)
presence of)

THE COMMON SEAL)
OF)

CO-OPERATIVE HOUSING)
SOCIETY LIMITED has)
been hereunto affixed)
pursuant to the Resolution of)
its Managing Committee)
bearing date)
the day of 19)
in the presence of Shri)
the Chairman of)
the said Society, Mr.)
, a member of the)
Managing Committee of the)
said Society and Mr. ,)
the Secretary of the said)
Society who have each signed)
these presents in the pre-)
sence of)

RECEIVED of and from the withinnamed Purchasers herein the sum of Rs. (Rupees only) being the withinnamed consideration money to be paid by them to me.

Witness: I SAY RECEIVED.

ARCHITECTS UNITED PUNE 411 004

PRECEDENT NO. 4

ARTICLES OF AGREEMENT made this day of 196 BETWEEN Shri , Chief Promoter of Co-operative Housing Society Limited (proposed) hereinafter referred to for brevity's sake as the chief promoter" of the One Part and Shri (names of the 12 promoters) hereinafter referred to as "the purchasers" (which expression shall mean and include the heirs, executors, administrators and assigns of each of them) of the Other Part WHEREAS the purchasers have entered into an Agreement of Sale dated the day of 196 with the vendors Shri for the purchase of the land or ground being N. A. No. with the messuages, tenement or dwelling house standing thereon situate lying and being at , Taluka , District within the limits of the Sub-Registrar at and more particularly described in the Schedule hereunder written (hereinafter referred to for brevity's sake as "the said property") on terms and conditions mentioned in the the said Agreement of Sale AND WHEREAS the purchasers have agreed to form themselves into a Co-operative Housing Society Limited and have the said property conveyed to the said Co-operative Housing Society Limited which is hereafter to the formed as aforesaid AND WHEREAS the purchasers agree with the Chief Promoter that they will pay their share and contribute to the purchase of the said property hereunder mentioned and also to pay and bear all other costs, charges and expenses in respect of the said property NOW THIS AGREEMENT WITNESSETH AS UNDER:

1. That the purchasers hereby agree with the Chief Promoter that they will pay their proportionate share and make their contribution for the purchase of the flats in their occupation to be paid as purchase price to the vendors for the purchase of the said property hereunder mentioned in respect of which

the purchasers have entered into an Agreement of Sale dated the day of with the vendors hereinabove mentioned.

2. The purchasers further agree with the Chief Promoter that they will pay, bear and contribute their share and proportionate part of all the costs, charges and expenses incurred in the formation of the Co-operative Housing Society Limited and also pay, bear and contribute all rates, taxes, Municipal dues, water and electricity charges which may be due or accrue or become payable in respect of the said property and in respect of the flats in their respective possession upon the completion of sale of the said property and also to pay up all arrears due, if any, in respect thereof.

3. The purchasers hereby declare that they have entered into an Agreement of Sale dated with the vendors for the purchase of the said property which includes the plot of land and the building thereon and they the purchasers hereby agree and undertake that they will transfer all their right, title and interest in the said property and have the said property conveyed from the vendors to the proposed Co-operative Housing Society to be formed hereafter without charging any premium or consideration other than that agreed to be paid to the vendors and without any delay and to be members of the said proposed Co-operative Housing Society Limited. The purchasers further declare the they agree to join in the said Conveyance as confirming parties and to convey to the said Society to be formed hereafter and registered absolutely and unconditionally the said property inclusive of the building known as mentioned in the Schedule hereunder written.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seal the day and year first hereinabove written.

THE SCHEDULE HEREINABOVE REFERRED TO:

Signed sealed and delivered)
by the withinnamed Chief)
Promoter in the presence of)

Signed sealed and delivered (Signatures of the twelve pro-
by the withinnamed purcha- moters)
sers in the presence of)

PRECEDENT NO. 5

THIS AGREEMENT made this day of One-thousand nine hundred and sixty- BETWEEN Shri Bombay Inhabitant hereinafter called "the Vendor" (which expression shall, unless it be repugnant to the context or meaning thereof, he deemed to include her/his heirs, executors and administrators) of the One Part and Shri also of Bombay Inhabitant hereinafter called "the Purchasers" (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to include his heirs, executors, administrators and assigns) of the other part WHEREAS by an AGREEMENT dated 19 made between Messrs. of the one part and the Vendor of the other part, the said Messrs. agreed to sell and transfer and the Vendor aforesaid agreed to purchase and acquire Flat bearing No. on the floor of the building known as situate at Plot No. , Road, ,Bombay, (hereinafter for brevity's sake referred to as "the said premises") together with permanent and absolute right of use and occupation of the said flat No. AND WHEREAS the Vendor has in terms of the said Agreement paid to the said Messrs. the entire consideration of Rs. mentioned in clause No. thereof AND WHEREAS the Vendor is in possession of the said flat No. AND WHEREAS the Vendor has agreed to sell and transfer to the Purchaser and the Purchaser has agreed to purchase and acquire all rights, title and interest of the Vendor in the said flat together with the permanent and absolute right of use and occupation of the said flat and also pay the deposit for formation of the Co-operative Society which has been paid by the Vendor NOW THIS AGREEMENT WITNESSETH and it is hereby agreed by and between the parties hereto as follows:

1. The Vendor shall sell and the Purchaser shall purchase and acquire the said Flat No. in the building known as together with the permanent and absolute right of the use and occupation of the said flat and together with the benefit in the said deposit of Rs. for a lumpsum price of Rs. .

2. The Purchaser has paid to the Vendor on or before the execution of these presents the said sum of Rs. (Rupees only) (the receipt whereof the Vendor doth hereby admit and acknowledge and of and from the payment of the same and every part thereof doth hereby release and for ever discharge the Purchaser).

3. The Vendor doth hereby covenant with the Purchaser that the said premises agreed to be hereby sold are free from incumbrances of any nature whatsoever and that the Vendor has full and absolute power to transfer and deliver possession of the said flat No. to the Purchaser.

4. The Vendor has in pursuance of the said Agreement and in consideration of the said sum of Rs. paid by the Purchaser to the Vendor as aforesaid delivered to the Purchaser vacant possession of the said flat No. .

5. The Vendor doth hereby covenant with the Purchaser that he/she the Vendor has paid to the said Messrs. his/her share of taxes and outgoings upto date in respect of the said flat and that if any amount is due from the Vendor to the said Messrs. and/or any other person or persons or authority for his/her share of taxes and outgoings or any amount relating to the said flat, the same shall be paid by the Vendor and if any such amount is recovered from the Purchaser relating to the said flat the same shall be made good by the Vendor to the Purchaser and the Vendor doth hereby agree to indemnify the Purchaser for payment thereof.

6. The Vendor doth hereby further covenant with the Purchaser that the Purchaser shall henceforth quietly and peacefully possess and occupy and enjoy the said premises without any let, hindrance, denial, demand, interruption or eviction by the Vendor or any other person or persons lawfully or equitably claiming through under or in trust for the Vendor.

7. That the Purchaser shall be entitled to have and hold the possession, occupation and use of the said flat and the Purchaser shall hold the same unto and to the use and benefit of the Purchaser, his/her heirs, successors and assigns for ever without any claim, charge, right, interest, demand or lien of the Vendor or any person or persons claiming through or under him/her or

in trust for him/her subject to payment by the Purchaser of all taxes, assessments, charges, duties or calls made by the said Society, Government, revenue or local authorities hereafter in respect of the said premises and the land.

8. The Purchaser doth hereby covenant with the Vendor that save and except as aforesaid the Purchaser shall from the date of these presents pay his/her share of taxes and outgoings as mentioned in the said Agreement dated 19 and shall also become a member of the Co-operative Housing Society or any other incorporated body to be formed by all the flat-owners of the said building and shall carry out the terms and conditions of the said Agreement and also abide by the rules and regulations of the said Society.

9. That the Purchaser doth hereby covenant with the Vendor that he/she shall abide by the rules and regulations and the bye-laws of the said Society on admission as a member thereof and that he/she agrees and undertakes to pay and discharge all calls, demands, contributions and dues which the said Society may hereafter make in respect of the said premises.

10. The Vendor hereby further covenant with the Purchaser that the Vendor shall from time to time and at all times whenever called upon by the Purchaser or his/her Advocate or Attorneys do and execute or cause to be done and executed all such acts deeds and things whatsoever for more perfectly securing the interest of the Purchaser in the premises agreed to be hereby sold unto and to the use of the Purchaser as shall or may be reasonably required but at the cost of the Purchaser.

11. The said Agreement dated 19 and all other relevant papers and receipt of payments made by the Vendor have been duly delivered by him/her to the Purchaser on the execution of these presents.

12. Save and except as aforesaid all the terms and conditions of the said Agreement dated 19 shall be binding on the Purchaser as if all the terms and conditions were bodily incorporated in this Agreement.

IN WITNESS WHEREOF the parties hereto have set their respective hands hereunto and to a duplicate hereof the day and the year first hereinabove written.

SIGNED AND DELIVERED)
by the withinnamed Vendor)
in the presence of)

SIGNED SEALED AND)
DELIVERED by the within)
named Purchaser in the)
presence of)

RECEIVED of and from the withinnamed Purchaser the sum of Rs. (Rupees only) being the full consideration within-mentioned to be paid by him/her to me.

WITNESSES:

I SAY RECEIVED.

To *Date*

Dear Sir,

Re : Flat No. on floor in building known as Plot No. , Road, Bombay.

I have purchased from all his/her right title and interest in the aforesaid flat under an Agreement dated made between the said and myself inter-alia on the terms and conditions contained in the Agreement dated made between yourselves and the said . A copy of the Agreement dated is sent herewith. The said has also addressed to you a separate letter dated in this connection.

I confirm that I have agreed and undertaken to abide by all the terms and conditions of the said Agreement dated between yourselves and the said in respect of the said flat and that I am and shall be bound to pay to you all the arrears of the Municipal taxes, water charges, and lease money and other outgoing, if any, payable to you by my vendor aforesaid in respect of the said flat upto date and I shall punctually pay to you and/or the Society that has been or is to be formed under the said Agreement dated all such outgoings and charges as above-mentioned that will hereafter be due and payable to you by me.

Kindly transfer the said flat to my name and oblige.

Thanking you,

Yours faithfully,

DEED OF ASSIGNMENT

THIS DEED OF ASSIGNMENT made at Bombay this day of 196 BETWEEN Shri , Adult Inhabitant of Bombay hereinafter referred to as "the Assignor" (which expression shall mean and include his heirs, executors and administrators) of the One Part AND Shri also Adult Inhabitant of Bombay hereinafter referred to as "the Assignee" (which expression shall mean and include his heirs, executors, administrators and assigns) of the Other Part WHEREAS the Assignor has acquired Block No. on the floor of the building known as " ", Plot No. , Road, , Bombay , under an Agreement dated the day of 19 between himself as Party of the Second Part and Shrimati and others as Party of the First Part after paying Rs. as purchase price and some deposits mentioned therein AND WHEREAS the Assignee had paid a deposit of Rs. (Rupees thousand only) to the Assignor for the purchase of the said flat No. and the Assignor had delivered vacant possession of the said flat No. to the Assignee in pursuance of the Agreement of Sale dated day of 196 AND WHEREAS the Assignor has agreed to assign all his right, interest, title and benefits under the said Agreement dated the day of 196 to the Assignee free from all encumbrances NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Rs. (Rupees thousand only) paid by the Assignee to the Assignor (the receipt whereof the Assignor doth hereby admit and acknowledge and forever discharge, acquit and release the assignee of the same and every part thereof) the Assignor doth hereby assign and transfer all his right, interest, title and benefits arising out of the said Agreement dated the day of 196 mentioned hereinabove

including the deposits standing to the credit of the Assignor with the said Shri and others being the Party of the First Part referred to in the Agreement dated the day of 196 TO HAVE AND TO HOLD the same unto and to the Assignee absolutely but subject to the conditions on which the Assignor held the same under the Agreement dated the day of 196 and the Assignee doth hereby agree to take the said Block subject to such conditions contained therein AND the Assignor doth hereby agree to indemnify the Assignee against all loss and damage occasioned as a result of defect in title or want of title to the said block or for any reason the said flat is not transferred to the name of the Assignee or the Assignee is not made a member of the proposed Co-operative Housing Society of the said building known as " " or refused membership of the said proposed Co-operative Housing Society or the Assignee is dispossessed of the said flat by the said Shri and others being the Party of the First Part referred to in the said Agreement dated the day of 196 as a result thereof AND the Assignor further agrees and covenants with the Assignee to execute all other documents and/or deeds and to do all acts, things and deeds as may be necessary to complete and make perfect the title of the Assignee to the said flat.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day and year first hereinabove written.

Signed and delivered by the)
withinnamed Assignor Shri)

in the presence of)

Signed and delivered by the)
withinnamed Assignee Shri)

in the presence of)

RECEIVED of and from Shri the sum of Rs. (Rupees thousand only) being the balance of the purchase price of Flat No. , floor, Plot No. , Road, , Bombay, making the total purchase price of Rs. (Rupees thousand only).

I SAY RECEIVED.

Witness:

PRECEDENT NO. 7

AGREEMENT OF LEAVE AND LICENSE

ARTICLES OF AGREEMENT made and entered at Bombay this day of 196 BETWEEN Shri adult inhabitant of Bombay hereinafter called "the party of the First part" (which expression shall include his heirs, executors and administrators) of the One Part AND Shri also adult inhabitant of Bombay, hereinafter called "the party of the Second part" (which expression shall include his heirs, executors and administrators) of the Second Part and Shri , also adult inhabitant of Bombay hereinafter called "the Guarantor" of the Third Part WHEREAS the Party of the First Part are seized and otherwise well possessed of the Floor Flat No. consisting of bed-room/s with attached bathroom/s, drawing room/s, kitchen/s, balcony/ balconies, passage/s etc. in the building known as situated at Road, , Bombay , hereinafter called "the said premises" AND WHEREAS the party of the Second part being in need of temporary accommodation for a short period of eleven months on leave and license basis to accommodate his family members and therefore has approached the party of the First part through the party of the Third part to allow to use the said premises hereinabove referred along with furniture and things, fixtures and fittings provided in the said premises by the party of the First part on leave and license basis for a period of eleven months commencing from the date of the execution of these presents AND WHEREAS the party of the First part have agreed to comply with the request of the party of the Second part to grant him leave and license to use and occupy the said premises for a period of eleven months only on the terms and conditions mutually agreed upon AND WHEREAS it is desirable to reduce the terms and conditions into writing NOW IT IS HEREBY AGREED BY AND BET-

WEEN THE PARTIES HERETO as follows:—

1. That in consideration of the compensation herein described and the observance of the terms and conditions on the part of the party of the Second part and party of the third part hereinafter contained and agreed by them, the party of the First part do hereby grant permission to the party of the Second part to use and occupy the said premises along with furniture and things, fixtures and fittings for a period of eleven months only commencing from day of 196 to day of 196 .

2. The party of the Second part hereby agrees to pay to the party of the First part the sum of Rs. (Rupees only) per month as compensation for the use and occupation of the said premises and Rs. (Rupees only) per month for the use of the furniture and articles, fixtures and fittings belonging to the party of the First part and payable in advance by the 1st of every month commencing from the 1st of 196.

3. This agreement shall be for a period of eleven months only from the date of execution of these presents and it may be renewed for a further period of eleven months at the sole discretion of the party of the First part on the same terms and conditions contained herein. On the expiry of this agreement, the party of the Second part shall remove himself, his family members and servants and all things belonging to him from the said premises and vacate the said premises without causing any obstruction or hindrance whatsoever to the party of the First part.

4. The party of the Second part shall deposit with the party of the First part the sum of Rs. (Rupees only) as security for the said furniture and articles, fixtures and fittings (a list whereof is mentioned hereunder) for the due and faithful performance of the terms and conditions contained herein. It is expressly agreed and declared by the parties hereto that if the party of the Second part commits defaults or breaches of the terms and conditions contained herein, the party of the First part shall be entitled and at liberty to forfeit the said deposit amount and without prejudice to his other remedies at law shall be entitled and at liberty to forcibly remove the party of the Second part, his family members and servants and his articles lying therein. It is further agreed and declared by the parties hereto that the said deposit amount shall remain with the party of the First part and will be refunded without interest by the party of the First part to the party of the Second part on the

expiry of this agreement but subject to any deductions that may be made therefrom for any amount that may be due by the party of the Second part to the party of the First part.

5. That the party of the First part have installed separate meters for lighting and domestic purposes and the charges for electric consumption including meter hire shall be borne and paid by the party of the Second part according to the bills submitted by the Bombay Suburban Electric Supply in respect of the said premises during the period of this license.

6. That the party of the Second part shall use the said premises for his residential purpose only with his bona fide family members and shall not permit any one else to use and occupy the said premises.

7. That the party of the Second part shall keep and maintain the said premises along with the furniture and articles, fixtures and fittings in good and clean condition.

8. That the party of the Second part shall be deemed to be only a licensee for a period of eleven months only by virtue of these presents and shall not make or have any claim to tenancy, sub-tenancy or any other right, title or interest of whatsoever nature in the said premises or portion thereof. It is agreed between the parties hereto that the party of the Second part shall not grant a sub-license to any other person and shall not keep any other person in place or stead of the party of the Second part.

9. That the party of the Second part shall not store any hazardous or inflammable articles in the said premises.

10. That the party of the Second part shall not change or alter whether of temporarily or permanent nature in the said premises or any portion thereof without the written consent of the party of the First part.

11. On the expiry of this agreement the party of the Second part shall hand over vacant and peaceful occupation to the party of the First part without any objection whatsoever. In the event of the party of the Second part fails to hand over vacant and peaceful occupation of the said premises in good and clean condition to the party of the First part, the party of the First part will be entitled and at liberty to enter into the said premises and retake occupation of the said premises from the party of the Second part without recourse to a court of law and without prejudice to the right of the party of the First part to recover damages from the party of the Second part.

12. In the event the party of the Second part fails to hand over vacant and peaceful occupation on day of 196

to the party of the First part as provided in clause 10 hereinabove, the party of the Second part shall pay Rs. (Rupees only) per day as prorata compensation from day of 196 till the said premises are in the occupation of the party of the Second part.

13. If the party of the Second part fails to hand over vacant occupation of the said premises in good and clean condition within the stipulated time as stated above, the party of the First part shall hold liable the party of the Third part for recovery of arrears of compensation if any and prorata compensation at Rs. per day from the day of 196 till recovery of the said premises from the party of the Second part or any other person or persons claiming through the party of the Second part and all other moneys payable by the party of the Second part.

14. The party of the Third part hereby agree to guarantee in consideration of the said premises, due performance and observance of all the terms and conditions, stipulations and obligations hereof by the party of the Second part.

15. The party of the Third part guarantees to remove the party of the Second part from the said premises on the expiry of this agreement and put in occupation the party of the First part of the said premises.

16. That the party of the Third part doth hereby agree and declare that the guarantee herein is to be a continuing guarantee and is to be binding on the party of the Third part during the period of the license and thereafter so long as the party of the Second part remains in occupation of the said premises.

17. That in the event if the party of the Second part fails to remove himself, his family, agents and servants together with his belongings from the said premises, the party of the First part shall be at liberty to sue at their option the party of the Second part and/or the Guarantor for all their dues of whatever nature and for recovery of the exclusive use and occupation of the said premises together with fixtures and fittings, prorata compensation and all other money due and payable by the party of the Second part.

18. That the party of the Second part shall observe and perform the rules and regulations of the Co-operative Housing Society Ltd. and shall become a nominal member of the said Co-operative Housing Society Ltd. The party of the Second part shall sign membership application form and other relevant documents for the purposes of admission to nominal membership of the said Society.

19. That the party of the Second part shall not use the said

premises for any illegal, immoral or improper purposes and not commit nuisance to the neighbours of the said premises.

20. That the party of the Second part shall keep the said premises in good condition and order and shall not damage the fixtures and fittings. In case there is any damage caused to the said premises or fixtures and fittings, the same shall be made good at the cost of the party of the Second part.

21. That the said premises having been given on leave and license basis only, the party of the Second part shall not deal with it in any manner whatsoever and shall not part with the occupation of the said premises under any circumstances to any person or persons whatsoever.

22. That the party of the First part shall have the right to visit the said premises by himself or his authorised agents at all reasonable time to satisfy himself that the said premises are used in accordance with the terms and conditions of this agreement and that no objectionable, illegal or prohibitory activities are going or carried on in the premises. It is explicitly understood that the party of the Second part shall be liable for acts of omission and commission on the part of the party of the second part and their agents and the party of the First part shall not be liable therefor under any circumstances whatsoever.

23. That the party of the First part are not liable for any damage or injury to any person whatsoever or to any property whatsoever by fire, rain, leakage, breakage or bursting of the water pipes or electricity in the said premises or giving way of any portion of the flooring wall, roof or any part of the said building from any cause whatsoever.

24. It is hereby agreed and provided between the parties that the party of the First part shall be put in use and occupation of the above said premises on the expiry of this agreement.

IN WITNESS WHEREOF the parties to these premises have hereunto set their respective hands the day and year first herein-above written.

THE LIST ABOVE REFERRED TO:

SIGNED SEALED AND)
DELIVERED by the with-)
innamed the party of the)
First part in the presence)
of)

SIGNED SEALED AND)
DELIVERED by the with-)
innamed the party of the)
Second part in the presence)
of)

SIGNED SEALED AND
DELIVERED by the with-)
innamed the party of the)
Third part in the presence)
of)

RECEIVED of and from the party of the Second part the day and year first hereinabove written the sum of Rs.
(Rupees thousand only) being the deposit amount within-mentioned to be paid by the party of the Second part to the party of the First part.

WITNESSES:

I SAY RECEIVED.

ARCHITECTS UNITED PUNE-411 004

PRECEDENT NO. 8

MEMORANDUM OF ASSOCIATION
OF
THE ASSOCIATION OF THE BLOCK OWNERS LTD.

I. The name of the Company shall be The Association of the House Block Owners Limited.

II. The Registered Office of the Company shall be situated in the State of Maharashtra.

III. The objects for which the Company is established are:

1. To engage in the business of real estate for the benefit of its members, and in particular purchase and sale of land and/or buildings and owning, buying, selling, hiring, letting, sub-letting, maintaining, alloting, transferring allotment, administering, exchanging, mortgaging, accepting mortgage, renting, leasing, sub-leasing, surrendering, accepting surrender, accepting lease, tenancy or sub-tenancy and constructing, reconstructing, extending, altering or demolishing buildings or tenements, blocks, flats, shops, godowns, garages, etc., etc. through its own agency or through contractors and purchasing, holding in stock or selling materials incidental to construction, repair, overhaul or maintenance of land and buildings to fix and collect rents.

2. To purchase, take on lease or in exchange, or otherwise acquire any lands and buildings in/at or else where, any estate or interest in, any rights connected with, any such lands and buildings.

3. To develop and turn to account any land acquired by or in which the Company is interested and in particular by laying out and repairing the same for building purpose.

4. To establish and carry on its own account or jointly with individuals or institution, educational, physical, social, and re-creative activities such as clubs, cinema theatres, cinema shows and canteens, etc., particularly for the benefit of its members and tenants.

5. To acquire the leasehold plot No. , Ward No. situate at Street, Bombay together with the buldings and erections, including flats, shops, godowns, garages, blocks or other tenements standing and being thereon.

6. To let out flats, shops, godowns, garages, blocks or tenements to the shareholders on rents to be fixed by the Company from time to time as deemed necessary for the purpose of their self-occupation or for letting out to other parties.

7. To frame rules, regulations and/or bye-laws for carrying out the objects of the Company to be observed and followed by the members and tenants of the Company, whether self-occupying or sub-letting their flats, shops, godowns, garages, blocks or tenements.

8. To provide sanctions in the form of fines, penalties, expulsion etc. so as to enforce compliance with and obedience to the rules, regulations and bye-laws or other instructions or directions issued by the Company from time to time.

9. To let, lease, sell, resell, exchange, part with, transfer, purchase, mortgage, charge or otherwise deal with the Company's undertaking or lands buildings or other property or any part thereof belonging to the Company, or which may be deemed necessary or convenient for the purpose of the Compay's business as may be thought desirable.

10. To borrow or raise moneys or loans for the purposes of the Company by promissory notes, bills of exchange, hundies or other negotiable or transferable instruments or by mortgage or debentures or by debenture stock — perpetual or otherwise charged upon all or any of the Company's property (both present and future) including its uncalled capital and to purchase redeem or pay off any such securities upon such terms as the Directors may deem expedient or in such other manner as may be deemed expedient, to take moneys to customers others having dealing with the Company and to guarantee the performance of contracts by such persons.

11. To advance or guarantee loans to members.

12. To amalgamate with or buy up any other Company which has got objects similar to those of this Company or any of them and which may seem directly or indirectly calculated to benefit this Company and to purchase or otherwise acquire or hold shares in any other Company having objects all together or in part similar to those of the Company.

13. To enter into arrangement with any Government, Railway, Municipal or Local Authorities or other persons or firms which may seem conducive to the attainment of any of the Com-

pany's objects and to obtain from any such Government, Railway, Municipal or Local Authorities or other persons or firms any rights, privileges and concessions which the Company may think beneficial to obtain and carry out, exercise or comply with any such arrangements, rights, privileges and concessions for the benefit of the Company.

14. To sell or dispose of the property or undertaking of the Company or any part thereof for such consideration as the Company may think fit and in particular for shares, debentures or securities of any other Company having objects altogether or in part similar to those of the Company.

15. To develop and turn to account any land acquired by the Company or in which it is interested and in particular by laying out and preparing the same for building purposes, constructing, altering, pulling down, decorating, maintaining, fitting up and improving buildings and by planting, paving, draining, farming, cultivating, and letting buildings on lease or building agreements and by advancing moneys to and entering into contracts and arrangements of all kinds with builders and others.

16. To draw, make accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.

17. To sell, improve, manage, develop, exchange, lease, mortgage, enfranchise, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.

18. To pay for any properties or rights acquired by the Company whether in cash or fully paid up shares or partly in one mode and partly in the other and generally on such terms as the Company deems fit.

19. To give any donations to any charitable or other institutions.

20. To distribute any of the property of the Company in specie among the members except by way of dividends.

21. To do all or any of the above things in any part of the world and as principals, agents, contractors, trustees or otherwise and by or through trustee, agents, or otherwise and either alone or in conjunction with others.

22. To do all such other things as are incidental or conducive to the attainment of the above objects.

IV. The liability of the members is limited.

V. The authorised share capital of the Company is Rs. divided into share of Rs. (Rupees) each and

with power to increase or reduce the capital, to divide whether original or increased several classes and to attach thereto such preferred rights, privileges or conditions as may be determined by or in accordance with the regulations of the Company and the provisions of the Companies Act I of 1956 and to vary, modify and abrogate any such rights, privileges and conditions.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the columns shown against our names.

ARTICLES OF ASSOCIATION
OF
THE ASSOCIATION OF THE BLOCK OWNERS LTD.

1. The regulations contained in Table A in Schedule I to the Companies Act, 1956 (hereinafter referred to as Table "A"), shall apply to this Company.
2. Regulation 66 of Table A shall not apply to the Company.
3. The qualification of a director shall be the holding of at least five shares in the Company.
4. The first Directors of the Company shall be the subscribers to the Memorandum & Articles of Association of the Company. They are as follows:

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

PRECEDENT NO. 9

INDENTURE OF CONVEYANCE

THIS INDENTURE made this day of in the year One thousand nine hundred and sixty BETWEEN Shri an Indian Inhabitant of Bombay hereinafter called 'The Vendor' (which expression shall, unless it be repugnant to context or meaning thereof mean and include his heirs, executors, administrators and assigns) of the One Part and also an Indian Inhabitant of Bombay hereinafter called 'The Purchaser' (which expression shall, unless it be repugnant to the context or meaning thereof mean and include his heirs, executors, administrators and assigns of the Other Part WHEREAS by an Indenture of Conveyance dated the day of 19 and made between Shri , Shri and Shri therein called the Vendors of the One Part and the Vendor therein called the Purchases of the Other Part and registered at the Office of the Sub-Registrar of Bombay on the day of 19 under serial No. of Book (hereinafter called the said Indenture of Conveyance) for the consideration therein mentioned the said Shri , Shri and Shri granted and conveyed to the Vendor all that the vacant piece or parcel of land or ground admeasuring square yards or thereabouts more particularly described in the Second Schedule to the said Indenture of Conveyance AND WHEREAS after the said Indentury of Conveyance the Vendor constructed two buildings thereon which said two buildings are shown on the plan thereof hereto annexed and marked 'A' and thereon shown as Building No. and Building No. AND WHEREAS the said Building No. consists of Shops and residential flats and the said Building No. consists of residential flats AND WHEREAS the Vendor agreed to sell the said shops and residential flats in Building No. and the said residential flats in building No. to different

purchasers and to convey to each purchaser an undivided portion or interest in the entire piece of land described in the Second Schedule to the said Indenture of Conveyance with full proprietory rights such as the Vendor derives from his title as bonafide owner of the undivided portion of the said piece of land and entire proprietory rights as bonafide owner in each shop and/or flat or flats constructed in each building to each separate purchaser AND WHEREAS the Vendor agreed to sell and transfer to the said Shri (1) an undivided 1/119 share of interest in the said piece or parcel of land comprised in and described in the Schedule Second to the said Indenture of Conveyance and (2) entire proprietory rights in Shop No. on the ground floor of Building No. more particularly described in the Second Schedule hereunder written at or for the price of Rs. (Rupees thousand and hundred only) and received from the said sum of Rs. (Rupees thousand only) towards and in part payment of the said purchase price AND WHEREAS the Vendor put the said Shri in possession of the said Shop No. as bonafide owner of the shop No. on the floor of Building No. AND WHEREAS the said Shri by an Agreement of Sale dated day of 19 entered into between the said Shri and the Purchaser agreed to sell to the Purchaser the above said Shop No. on the floor Block , Building No. with 1/119th undivided share in the plot of land AND WHEREAS the Purchaser paid to the said Shri a sum of Rs. (Rupees thousand only) and the said Shri put the purchaser in possession of the said Shop No. AND WHEREAS the Purchaser agreed to pay the balance of the purchase price to the Vendor AND WHEREAS disputes and differences arose between the Vendor and Purchaser for the payment of the balance of the amount of the purchaser's 1/119th share in the land AND WHEREAS the right title and interest of the Vendor in the land was attached by the Additional Collector of Bombay for the recovery of Income-Tax dues payable by the Vendor AND WHEREAS at the intervention of the Additional Collector of Bombay the Vendor and the Purchasers have settled their dispute and the Vendor has agreed to accept in full satisfaction the balance of the amount of Rs. (Rupees) AND WHEREAS the said amount has been paid by the Purchaser to the ADDITIONAL COLLECTOR OF BOMBAY on behalf of the Vendor AND WHEREAS the ADDITIONAL COLLECTOR OF BOMBAY has on such payment raised the attachment on the Property covered hereunder written AND WHEREAS the Pur-

chaser has requested the Vendor to execute these presents NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Rs. (Rupees thousand only) paid to the Vendor by the said Shri before the execution of these presents and a further sum of Rs. (Rupees hundred and only) paid to the Additional Collector of Bombay on behalf of the Vendor on execution of these presents (the payment and receipt whereof the said Vendor doth hereby admit and acknowledge and of and from the same and every part thereof doth forever acquit release and discharge the said Purchaser) He the Vendor doth hereby forever grant convey transfer and assure unto the Purchaser all that the undivided 1/119th (one hundred nineteenth) share or portion in the said piece or parcel of land situate at Road, more particularly described in the Second Schedule to the said Indenture of Conveyance and also more particularly described in the First Schedule hereunder written and the entire proprietory right in Shop No. , floor of building No. more particularly described in the Second Schedule hereunder written and more particularly delineated and shown on the map or plan thereof hereto annexed and marked 'A' and thereon surrounded by a boundary line coloured Red TOGETHER WITH all and singular houses courts yards walls areas the ways compounds paths passage common gullies waters watercourses sewers ditches fences drains trees plants lights liberties easements profits privileges advantages rights members and appurtenances whatsoever to the said piece or parcel of land or ground hereditaments and premises belonging to or in anywise appertaining or with the same or any part thereof now or at any time heretofore usually held occupied or enjoyed or reputed to belong or be appurtenant thereto and also together with all the fittings and furniture fixtures in the said shop No. in Building No. AND ALSO ALL the estate right title interest use trust inheritence property possession benefit claim and demand whatsoever both at law and in equity of the Vendor into out of or upon the said 1/119th undivided share in the said piece or parcel of land or ground hereditaments and premises or any part thereof and in the said shop No. in Building No. TO HAVE AND TO HOLD the said premises and all and singular other premises hereby granted released and assured or intended so to be with their and every of their rights members and appurtenances UNTO AND to the use of the Purchaser for ever SUBJECT TO PAYMENT of all rents assessments dues and duties now chargeable upon the same or which may hereafter become payable in

respect thereof AND the Vendor doth hereby covenant with the Purchaser that notwithstanding any act deed matter or thing whatsoever by him the Vendor or any person or persons lawfully or equitably claiming or to claim by from through under or in trust for him made done or knowingly suffered to the contrary he the Vendor now hath in himself good right full power and absolute authority to grant release and assure the said undivided 1/119th share in the said piece or parcel of land or ground hereditaments and premises and the said shop No. in Building No. unto and to the use of the Purchaser free from all incumbranches AND that the Purchaser shall and may at all times hereafter peaceably and quietly enter upon have hold occupy possess and enjoy the said hereditaments and premises and receive the rents issues and profits thereof to and for her own use and benefit without any suit eviction interruption claim and/or demand whatsoever from or by him the Vendor his heirs or any of them or any person or persons lawfully or equitably claiming or to claim by from under or in trust for him or them or any of them AND that free from and clear and freely and clearly and absolutely acquitted exonerated and for ever discharged or otherwise by the Vendor well and sufficiently saved defended and kept harmless and indemnified of from and against all former and other estates titles charges troubles and incumbrances whatsoever had made executed occasioned or suffered by the Vendor or any other person or persons lawfully or equitably claiming or to claim by from under or in trust for him or any of them AND FURTHER that he the Vendor and his heirs executors and administrators and all persons lawfully or equitably claiming any estate or interest in the said premises or any part thereof from under or in trust for the Vendor or his respective heirs or any of them shall and will from time to time and all times hereafter at the request and costs of the Purchaser do and execute or cause to be executed all such further and other acts deeds things conveyance and assurance in law whatsoever for the better and more perfectly assuring the said hereditaments and premises and every part thereof unto the use of the Purchaser in manner aforesaid as by the purchaser her respective heirs executors administrators or assigns or her or their counsel in law shall be reasonably advised or required AND the Vendor doth hereby covenant with the Purchaser that he the Vendor his heirs executors and assigns unless prevented by inevitable accident will upon every reasonable request in writing by the Purchaser or any person lawfully claiming from the Purchaser any estate or interest in the said piece or parcel of land

or any part thereof at the cost of the party or parties requiring the same produce or show or cause to be produced or shown at such time and at such place or places and to such person or persons as the Purchaser or such other party or parties as aforesaid shall reasonably require the said Indenture of Conveyance dated the th day of 19 for the manifestation defence or support of estate title and possession of the Purchaser or such other party or parties and will furnish to the Purchaser and every such other party or parties as aforesaid such true copies attested or unattested of and such abstracts of and extracts from the said Indenture of Conveyance as the Purchaser or such other party or parties as aforesaid may require and will in the mean time keep the said Indenture of Conveyance safe whole uncancellled and undefaced PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED THAT if the Vendor shall deliver the said Indenture of Conveyance to any person or persons lawfully entitled to the custody thereof and shall thereupon at his the Vendor's own expenses produce the person or persons to whom the said Indenture of Conveyance shall be delivered to enter into with and to deliver to the person or persons then entitled to the benefit of the foregoing covenant a covenant to the like purport and effect the foregoing then and thenceforth the covenant hereinbefore contained shall become void so far as relates to the document covenanted to be produced by such substituted covenant AND WHEREAS it is agreed between the Vendor and Purchaser that the Purchaser shall enter into the following convenants with the Vendor NOW THIS INDENTURE FURTHER WITHNESSETH that in pursuance of the said agreement and in consideration of the premises the Purchaser for herself her heirs executors administrators and and assigns and for all the present and future owners of the said undivided 1/119 share or portion in the said land hereditaments and premises doth hereby covenant with the Vendor and/or other co-owners who may have acquired heretofore or may hereafter acquire any interest in the soil of the land tenement or tenements in any of the two buildings that she the Purchaser will not ask for a partition by metes and bounds of the said piece or parcel of land more particularly described in the first schedule hereunder written.

IN WITNESS WHEREOF the Vendor and the Purchaser hereto have hereunto set and subscribed their respective hands and seals, the day and the year first hereinabove written.

FIRST SCHEDULE ABOVE REFERRED TO:

ALL these pieces or parcels of vacant land or ground now forming one piece situate at Road, , Taluka in the registration Sub-District of in the District containing by admeasurement square yards or thereabout and registered in Books of the Collector of Land Revenue as under:

Survey	*Hissa No.*	*Area* AC.	Sq. Yds.	*Assessment* Rs. As. Ps.

and bounded on the East by Road, North by the properties belonging to bearing S. No. on the West by the property belonging to S. No. and on the South by the property bearing S. N. belonging to

SECOND SCHEDULE ABOVE REFERRED TO:

All the 1/119th share in all that the undivided piece or parcel of land described in the first Schedule hereinabove written together with shop N. on the floor of Building No. situated on Road, , Taluka in the Registration District sub-District of in the District and the said Shop No. is bounded as under:

On the North by Shop No.
On the South by Shop No.

On the East by Road,
On the West by Flat No.

SIGNED SEALED AND)
DELIVERED by the)
withinnamed Vendor in)
the presence of)
SIGNED SEALED AND)
DELIVERED by the)
withinnamed Purchaser in)
the presence of)

RECEIVED of and from the withinnamed PURCHASER the sum of Rs. which together with the sum of Rs. makes up the sum of Rs. being the full consideration money abovementioned paid to me.

WITNESS. I SAY RECEIVED

PRECEDENT NO. 10

THIS AGREEMENT made and entered into this day of 19 BETWEEN Messrs. a partnership firm carrying on business at No. , Road, Bombay , hereinafter referred to for brevity's sake as "the Builders" (which expression shall mean and include the present and future partners of the said firm, their heirs, executors, administrators and assigns) of the one part AND Mr. Adult Inhabitant of Bombay, residing at , Bombay, hereinafter referred to as "the Chief Promoter" (which expression shall mean and include his successors and assigns) of the other part WHEREAS the Builders are a partnership firm engaged in the activities of construction and erection of buildings in Bombay AND WHEREAS the said Mr. has been elected the Chief Promoter of the Co-operative Housing Society to be formed hereafter comprising the purchasers of diverse flats of the buildings to be constructed on Plot No. , Road, , Bombay, (hereinafter for brevity's sake referred to as "the said proposed Society") AND WHEREAS the members of the Co-operative Housing Society Ltd. (proposed) are desirous of entrusting the task of construction and erection of five buildings on Plot No. situate at Road, , Bombay, on certain terms and conditions AND WHEREAS the parties have discussed the terms and conditions on which to entrust the contract for the construction and erection of five buildings as aforesaid and which the parties have agreed upon on certain terms and conditions hereinafter appearing NOW THIS AGREEMENT WITNESSETH AS UNDER:

I. It is hereby agreed and declared that (a) the Builders have purchased or are purchasing a plot of land at admeasur-

ing square yards or thereabouts as per City Survey Office Records and the Municipal authorities have granted permission to sub-divide the said plot into two parts No. admeasuring square yards and admeasuring square yards or thereabouts be the same a little more or less and (b) that the whole area of square yards was agreed to be purchased by Mr. a partner of the said Builders from Mr. and that the Solicitors for the said Mr. in the transaction were Messrs.
and that the said Builders are taking over from Mr. the benefit of the said agreement for the purchase of the said plot of land on the basis of the title as certified by Messrs.
Solicitors.

2. It is further agreed and declared that in the transaction of purchase of land from the Builders and the construction of the buildings which the Builders are to erect for the said Society in respect of which this contract has been entered into, the Society accepts the certificate of title given to the Builders by Messrs. , Solicitors, to the effect that the title to the property in question is marketable free from encumbrances and free from reasonable doubts and that no requisitions will be made by the said Society or objection taken by the said Society as regards the title which will be and is hereby accepted by the said Society.

3. It is hereby declared that the Chief Promoter shall at the cost of the said proposed Society form a Co-operative Housing Society under the Maharashtra Co-operative Societies Act 1960 by the th 19 with the name Co-operative Housing Society Limited or a name similar thereto, which Society will be a Co-operative Housing Society of Co-partnership tenancy. It is intended that the said Co-operative Housing Society on its formation will apply for financial assistance by way of loan to the Maharashtra Co-operative Housing Finance Society Ltd. to an extent not less than 50% to 60% of the estimated cost of the land and the buildings to be constructed.

It is further declared that negotiations with the said Maharashtra Co-operative Housing Finance Society Ltd. are already in progress and it is anticipated that 50% at least of the total finance required by the Society for the purposes hereinafter mentioned will be obtained by way of loan from the said Maharashtra Co-operative Housing Finance Society Ltd. on a mortgage of the land.

4. It is hereby declared that the copies of plans, specifications, list of amenities and the drawings in respect of five buildings to be constructed on the plot prepared by Messrs. , Architects, have been furnished to the Builders and the Builders have taken full inspection of all documents necessary for the purposes of construction and erection of the five buildings. The Builders have given to the said proposed Society two sets of the said plans, specifications, list of amenities and drawings and one set is returned herewith duly signed by the Chief Promoter in token of acceptance. It is further declared that the Builders shall present to the Bombay Municipal Corporation the necessary plans for being passed if possible in the name of Co-operative Housing Society which is the name proposed to be given to the Society intended to be formed and registered.

5. It is agreed between the parties that Messrs. will be and continue to be the Architects for the said proposed Society and the said Society to be formed hereafter until all the construction work is carried out by the Builders and that the same will be carried out under the Architects' directions as per the terms contained herein. It is further agreed that the said proposed Society shall pay the fees of Messrs. , Architects.

6. It is agreed and declared that on the basis of the assurances and agreements contained in paragraphs 1 and 5 above, the Society to be formed (hereinafter for brevity's sake called "the Society") will purchase land admeasuring square yards or thereabouts and the Builders shall construct for the Society according to the aforesaid plans, specifications, list of amenities and drawings five buildings and sixteen garages on the said plot of land.

7. It is agreed that each of the said five buildings on the above plot of land shall consist of a ground floor and three upper floors as shown in the aforesaid plans and as based on the present F.S.I.

8. It is agreed that the price the said Society will pay to the Builders for the land and for constructing five buildings as per the plans and specifications aforesaid (inclusive of the value of the land) agreed at Rs. shall be an amount calculated per each flat and per each garage at the rates specified in the Schedule "A" hereto annexed and marked "A" totalling Rs. . The price will include the laying of drainage and water connections to the Municipal mains and electric connections to the Bombay Suburban Electric Supply mains and all the amenities

specified in the list aforesaid.

9. It is hereby agreed and declared that the total price calculated as in Clause 8 above will be paid to the Builders by the instalments following:

(a) As to a sum of Rs. immediately on the Builders on execution of the agreement and satisfying the said proposed Society that the Conveyance of the said plots of land in the Builders' favour has been or will be duly executed. Provided that should execution of the Conveyance dated 19 already executed in the Builders' favour be not admitted by 19 , the Builders will refund to the said proposed Society all amounts which may have been paid to the Builders forthwith thereafter without interest or costs and this agreement shall stand terminated with no right on either party to make any claim for damages or otherwise aganist the other.

(b) As to a further sum of Rs. the same will be paid to the Builders on or before 19 or on the date of commencement of construction work by the Builders whichever date is earlier.

(c) As to a further sum of Rs. the same will be paid to the Builders on or before 19 .

(d) As to a further sum of Rs. (which sum when paid will make in all the sum of Rs. being 50% of the total price of the land, the five buildings and sixteen garages to be constructed by the Builders) will be paid to the Builders on or before 19 .

(e) Over and above the sum specified in sub-clauses a, b, c and d above, all sums or advances which may be b, c and d above all sums of advances which may be received by the Society from time to time by the Maharashtra Co-operative Housing Finance Society Ltd. under its arrangements with them will be paid to the Builders as and when it is received, the Chief Promoter and the Society undertaking to use their best endeavour to ensure regular payments as and when the construction work proceeds.

(f) The balance to make up the total amount or price viz. Rs. will be paid to the Builders on the Builders completing the construction of the five buildings in accordance with the terms herein contained and giving the Chief Promoter and/or the Society fifteen days' notice

in writing of such completion that is to say, the balance remaining out of Rs. will be paid to the Builders on the 15th day after the day of the notice of the completion given by the Builders to the Society.

10. It is hereby further agreed and declared that the said Society will be at liberty to and will endeavour to pay to the builders on or before th of 19 amounts over and above the aforesaid four payments of Rs. , Rs. , Rs. and Rs. from its own resources. In such case the Society will be allowed interest on such additional sums at the rate of 7½% per annum from the respective dates of payment to the date of completion of the five buildings and sixteen garages, it being clearly agreed and understood that any partial payments made less than the full amount of price due to be paid to the Builders viz. Rs. will not entitle the Society or any member thereof to acquire or obtain possession of the land and the five buildings and sixteen garages or any part or parts thereof, and also that any sum advanced by the Maharashtra Co-operative Housing Finance Society Ltd. to the Society which are to be paid over to the Builders as per Clause 9(e) above will not entitle the Chief Promoter to any interest.

11. It is hereby agreed between the parties hereto and declared as follows that:

(a) If after the payment of Rs. referred to in Clause 9(a) above, the Chief Promoter and/or the Society fails to pay to the Builders the further sum of Rs. on the due date therefor, the Builders will be entitled to forfeit the said sum of Rs. and the agreement will be terminated forthwith on such default being made by the Chief Promoter and by the Society and the Chief Promoter and the Society shall have no claim against the Builders for specific performance, compensation, damages or otherwise howsoever.

(b) If both the sums of Rs. and Rs. referred to in clause 9 (a) and (b) above have been duly paid out the further sum of Rs. and/or Rs. are not paid on the respective due dates therefor, the Builders will be entitled to forfeit the said sum of Rs. and the agreement shall stand terminated forthwith on any such default being made by the Chief Promoter and/or the Society and the Chief Promoter and the Society shall

have no claim against the Builders for the specific performance, compensation, damages or otherwise howsoever but the Builders shall return on or before 19 the sum of Rs. and/or Rs. and the Society if paid by them without interest and cost.

PROVIDED THAT

(i) If on or before th 19 , the registration of the Society under the Maharashtra Co-operative Societies Act, 1960 is not effected, or

(ii) If on or before the th April 19 , the Society is not able to enter into an agreement with or obtain a guarantee of the definite assurance binding in law from the Maharashtra Co-operative Housing Finance Society Ltd., to advance to the Society monies not less than 50% to 60% of the estimated cost of land and buildings as per valuations to be made by the said Maharashtra Co-operative Housing Finance Society Ltd., to be advanced periodically against construction work as it proceeds,

then and in either of the cases aforesaid notwithstanding anything hereinbefore contained this agreement shall stand terminated with no claim for specific performance, damages, compensation or otherwise on either side, and the Builders shall return to the Chief Promoter and the said Society the sum of Rs. and Rs or any of them that are paid to the Builders in terms of sub-clause (a) and (b) above without interest or costs on or before 19 .

12. It is hereby declared by the said proposed Society that they are negotiating with the Maharashtra Co-operative Housing Finance Society Ltd. for the Society when registered to borrow monies to the extent of not less than 50% to 60% of the estimated cost of land and buildings. Provided that the Builders have been paid a total sum of Rs. by the four instalments referred to in Clause 9 (a), (b), (c) and (d) above, the Builders will execute in favour of the Society (subject to all the other provisions in this agreement) a Conveyance of the plot of land which for this purpose has been valued at Rs. . All the costs of and incidental to the conveyance including stamp and registration charges will be paid by the Society and further the Society will take no objection and make no requisition as regards the Builders' title thereto which has been and shall

be accepted. The Builders will however make a declaration that they have not themselves created any incumbrance on the land and that if the Builders have done so they will clear the same. The conveyance will be drawn up by the Society's solicitors but will be approved by the Builders' solicitors. The Society will then mortgage the land to the Maharashtra Co-operative Housing Finance Society Ltd.

13. Subject to the other provisions of this agreement and in particular the provision for extension of time for construction and the Society duly making all the payments of the total price amounting to Rs. and the Society otherwise carrying out its obligations, the Builders will undertake to construct all the five buildings according to the terms hereof and deliver to the Chief Promoter and the said Society possession thereof (only against payment of the full price of Rs. by 19 and the Builders shall commence construction not later than 19 : Provided that cement is officially released to the Builders at controlled rates before 19 and if it is not so released the time for commencing construction shall be suitably extended.

14. It is expressly agreed and understood that the Society or the Chief Promoter will not claim and will not be entitled to claim possession of the five buildings or any buildings or any portion or portions thereof, and the Builders will be entitled to withhold possession thereof until the full amount of price namely Rs. is paid to the Builders in full in strict accordance with the terms of this Agreement along with all other amounts to be paid to the Builders under this Agreement notwithstanding that a conveyance may have been executed by the Builders after payment of the four sums of Rs. , Rs. , Rs. and Rs. referred to in clause 9 (a), (b), (c) and (d) in favour of the Society and the land may have been mortgaged by the Society to the Maharashtra Co-operative Housing Finance Society Ltd., as provided in Clause 12 above. The above right of withholding possession and retaining the same will be over and above and besides all the Builders' other rights at law or under the agreement and the Builders will have full right and liberty to take proceedings against the Society for the enforcement of the Builders' rights. The Builders will also have the right to have the land and the buildings sold at the cost and risk of the Society subject only to the claim of the Maharashtra Co-operative Housing Finance Society Ltd. The Society will also be bound and liable to pay interest at 7½% per annum from the respective due date for payment until payment of all the Build-

ers' dues it being expressly agreed that payment of interest shall not entitle the Society to any extension of time or to defer payment. It is also agreed that until the price of Rs. and all other payments required to be made to the Builders under this Agreement are made, the Society will, if so required by the Builders, at the cost of the Society execute in the Builders' favour a first mortgage or charge over the lands and buildings to be constructed provided however that if under the provisions of Clause 12 hereof a conveyance is executed by the Builders in favour of the Society and the Society has created a first mortgage or charge in favour of the Maharashtra Co-operative Housing Finance Society Ltd. of the land then and in such case, the said Maharashtra Co-operative Housing Finance Society Ltd., will have a first mortgage or charge over the land and the Builders' rights over the land will be subject to any such first mortgage in favour of the said Maharashtra Co-operative Housing Finance Society Ltd. by the Society. It is declared that notwithstanding the Builders' right to retain possession and not to hand over possession of the five buildings to be constructed until the full price of Rs. and all other monies due to the Builders are paid in full will remain unaffected and in force—besides all the Builders' legal rights under this Agreement and at law against the Society.

15. If any alterations are made in the plans at the instance of the Bombay City Municipal Corporation or any other authority, the Society shall accept all such alterations and it shall not be entitled to make any complaint or make any requisition or take any objection in connection therewith. The Builders will also not make any further charge to the said Society on acceptance of such alterations.

16. All outgoings of all kinds payable to the Bombay Municipal Corporation or the Collector of Bombay or any other authority as from the day the land is conveyed in favour of the Society will be borne and paid by the Society and it shall accept the Builders' invoices or bills or vouchers and pay the same forthwith on presentation.

17. The Society shall engage and appoint a clerk of works for the supervision of the construction of work during course thereof. Any difference of opinion as regards any matter arising in connection with the construction work between such clerk of works and the Builders will be decided in accordance with the directions of Messrs. , Architects whose decision shall be final and binding on the parties.

18. The plans, drawings and specifications shall be and remain the Builders' property until the completion of the conveyance in favour of the Society. If any discrepancy arises between the specifications and the plans or drawings, the specifications shall prevail over and be deemed to be correct and binding notwithstanding the drawings.

19. The Builders hereby agree and undertake that they shall remove all surplus material plant and rubbish from off the premises at any time before the handing over the possession of the five buildings and the garages at the Builders' own cost. The Builders shall clean the entire site of all material and make the compound level in good order and filled properly. The Builders will lay the lawns and flower beds and get the passage in the compound as shown in the plans aforesaid concreted before handing over possession, but no plants will be grown. All plant and materials brought in to the premises by the Builders will remain and will be deemed to be the Builders' property.

20. The Builders hereby agree and bind themselves and their agents that they shall conform to the provisions of any Acts, rules and regulations or bye-laws for the time being in force and shall and will give all necessary notices to obtain sanction of the local authorities in respect of the construction work and generally will comply with the building and other regulations of such authority. For any such purposes, the Society's consent or authority if required will be promptly given.

21. The Builders hereby agree with the said Society that they will not be entitled without the consent (which will not be unreasonably withheld) to assign or sub-let the work of building or construction or any part thereof to any person or persons for the execution of any portion of the said construction except departmental labour, plumbing, drainage, water supply, electric installations and all labour in respect of all which matters the Builders are entitled to assign, sub-let or sub-contract out of the work.

22. The Society shall not require the Builders to make any deviation from the said plans, drawings and specifications nor shall the Society require the Builders to do any additional or other work than as shown in the said plans, specifications and drawings. Provided however that if the Society request any additional or other work, it will be at the Builders' option to agree to carry out any such deviation or do any such additional work in which case the same will be paid for and carried out on such terms as may then be carried out will be made to the Builders in full against their submitting to the Society the bills

and before handing over possession of the five buildings and garages as hereinbefore provided.

23. In any of the following cases, namely, where delay is caused by (i) accident to the work whosoever's may be the responsibility therefor, (ii) extras or variations required as per Clause 15 and/or 22 above, (iii) Force majeure, (iv) Act of God, (v) Civil Commotion or disturbance or armed conflict of any kind or (vi) any other reasonable cause including in particular non-availability of materials required for the construction work, such as cement, or non-availability at controlled rates of such material, the Builders will be entitled to an extension of time proportionate to the delay caused in order to enable the Builders to complete the construction work. In case of difference of opinion as regards the time required Messrs. , Architects will fix the period of delay and the extension of time for construction required.

24. The Builders shall at all times during the period of construction keep all their labour and supervisory staff inclusive of foreman, etc. duly insured against all risks of workmen's compensation insurance or by taking any other insurance that may be deemed necessary in law.

25. The Society will pay directly to Bombay Municipal Corporation any amount that may have to be deposited towards consumption of water by the Society after the buildings are occupied likewise to the Bombay Suburban Electric Supply Co., Ltd. deposits against consumption of power. Water used upto the time of handing over possession of the buildings will be paid by the Builders alone.

26. The Society and its Architects Messrs. will be entitled to inspect the five buildings to be constructed by the Builders at any time or times during the period of construction and during the period of 15 days after receipt of notice of completion as set out in 9(f) above. Any requisition or objection in respect of the construction work and/or whether it has been carried out in accordance with this agreement shall be taken and intimated to the Builders only within that period of 15 days. If no requisition is made or objection taken within the said period of 15 days, the right to make or take such requisitions or objections will cease and determine and all requisitions and objections shall be deemed to have been waived. It is agreed that from the date possession is taken by the Society of the said five buildings and sixteen garages or if the period of 15 days aforesaid expires whichever be the earlier date, the Society shall not be entitled to make or

raise and shall not make or raise any requisition, contention or objection regarding the construction or otherwise in any manner including the quality of the work done and all such requisitions, contentions or objections regarding the construction or otherwise in any manner including the quality of the work done and all such requisitions, contentions or objections shall be deemed to have been waived and the Builders shall not be responsible in any way either to make any alterations, renovations or constructions or to pay any compensation, damages or monies whatsoever to the Society. Nothing herein contained shall however entitle the Society to delay or defer payments to the Builders of the balance of the monies due to the Builders and the same shall be paid on the due date therefore subject only to any requisition or objection made within the aforesaid period of 15 days.

27. The Society shall as soon as it is registered confirm this Agreement and if so required by the Builders will at its own cost in all respects enter into proper documents to confirm and carry out the terms and conditions herein contained.

28. All disputes, differences or questions which shall during the continuance of this Agreement (including the progress of the works and within the 15 days period referred to in clause 26) or thereafter arise, between the Builders and the Society and/or the Chief Promoter or the Builders' and the Society's and/or the Chief Promoter's respective representatives or between the one party and the representatives of the other touching the agreement between the Builders and the Chief Promoter and/or the Society or the construction or application thereof or any clause or thing in this agreement contained or as to any act deed or omission of any party in any way relating to this agreement or the rights duties or liabilities of any party under this agreement including without prejudice to the generality of the above, all disputes, differences or questions concerning the works or the execution of the works for the execution of the works or the specifications, drawings, plans or lists of amenities hereinbefore referred to, as to this matter arising out of or connected with or incidental to this agreement or the works to be executed or payments to be made in pursuance thereof or the rights duties or obligations of any party in relation to the premises shall be referred to the arbitration of the Registrar's nominee appointed under the Maharashtra Co-operative Societies Act, 1960, and the provisions relating to arbitration thereunder shall be the forum for the determination and settlement of all disputes arising out of or relating to this contract entered into

between the parties hereto.

29. The Chief Promoter hereby declares that he is acting on behalf of the Society to be formed of the promoters and the flat-purchasers. It is hereby further declared that the Chief Promoter has no right title or interest of any kind and shall not claim any such right title or interest in the plot of land aforesaid or in any construction work that the Builders may carry on there.

SCHEDULE 'A'

	Gr. Floor	*1st Floor*	*2nd Floor*	*3rd Floor*
Building No. 1				
Building No. 2				
Building No. 3				
Building No. 4				
Building No. 5				

SCHEDULE 'B'

Payments of amounts on following dates:

On sigining of Agreement		Rs.
th	19	Rs.
th	19	Rs.
th	19	Rs.
Amounts to be received from Housing Finance		Rs.
		Rs.
Balance due		Rs.
		Rs.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day and year first hereinabove written.

SIGNED SEALED AND)
DELIVERED by the)
withinnamed Builders)
Messrs.)
in the presence of)

ARCHITECTS UNITED PUNE 411 004

SIGNED SEALED AND)
DELIVERED by the)
withinnamed Chief)
promoter Mr.)
in the presence of)

PART FOUR

CONDITIONS FOR LOANS TO CO-OPERATIVE HOUSING SOCIETIES

ALLOTMENT OF LAND TO CO-OPERATIVE HOUSING SOCIETIES

DISPUTES AND ARBITRATION

LATEST AMENDMENTS TO MODEL BYE-LAWS OF CO-OPERATIVE HOUSING SOCIETIES

OWNERSHIP FLATS PRICES COMMITTEE'S REPORT—A RESUMÉ

NOTIFICATIONS

CONDITIONS FOR LOANS TO CO-OPERATIVE HOUSING SOCIETIES

I

THE MAHARASHTRA CO-OPERATIVE HOUSING FINANCE SOCIETY LTD., BOMBAY.

Conditions for Loans

1. Loans will be granted to Co-operative Housing Societies only subject to availability of finance from time to time.

2. Application for a loan will be entertained only after the applicant Cooperative Housing Society enrols itself as member of the Finance Society by purchasing at least one share of the face value of Rs. 500/-. Also please see Condition No. 9 below.

3. Loans will be advanced against the property with a clear and marketable title.

4. The detailed terms and conditions under which the loans will be considered for sanction are given below:

(1) Loans will not be advanced to any Cooperative Housing Society in Greater Bombay and the Town of Thana where the carpet area excluding the balconies and verandahs of any tenement or flat in a building exceeds 750 sq. ft.

(2) Loans will not be advanced to any Cooperative Housing Society in Towns or places having a population of more than one lakh, where the carpet area excluding balconies and verandahs in respect of building or flat or tenement in a building exceeds 1,000 sq. ft.

(3) Loans will not be advanced to any Cooperative Housing Society in other areas of the Maharashtra State where the carpet area excluding the balconies and verandahs in respect of any flat or tenement in a building or of a bunglow or house exceeds 1,500 sq. ft.

(4) No loans will be granted to Tenant-Ownership housing societies in Greater Bombay and the Town of Thana.

(5) In areas where the Floor Space Index Regulations are in force no loans will be granted to any Cooperative Housing Society if it does not propose to utilise the full F.S.I. at the time of application for loan.

(6) Loans will be granted to those societies only whose members are earning members by themselves, having earnings commensurate with the repaying capacity of the loan asked for. No minors shall be eligible to receive the loan from Finance Society.

All the members of the applicant society must have a domicile in the State of Maharashtra for at least ten years preceding the date of application.

In respect of the loans applications received after 30th April '66, the members of the applicant Societies shall produce a certificate of stay in Maharashtra for a period of 10 years out of which 3 years stay shall be in the area of operation.

(7) No loans will be granted to any Cooperative Housing Society where total income of any member thereof exceeds Rs. 24,000/- per annum.

(8) The maximum amount of loan that may be advanced by the Finance Society in respect of any flat or tenement in a tenant-copartnership type of society or building or a house in a tenant-ownership type of society shall not exceed Rs. 25,000/- subject to stipulations contained in condition No. 34 hereunder.

(9) No loans will be advanced to Cooperative Housing Societies where the cost of construction, including the cost of land, of each flat or tenement or a building exceeds Rs. 40,000/-. In the event of such cost exceeding Rs. 40,000/- the amount of loan to be advanced will be reduced proportionately at the time of disbursement of final instalment. ,

(10) No loans will be advanced to Cooperative Housing

Societies where the total number of membership at the time of application to the Housing Finance Society is less than 80% of the original members i.e. the members whose names were communicated to the Cooperative Department at the time of registration. A certified copy of the application submitted to the District Deputy Registrar or the Assistant Registrar, Cooperative Societies, for purpose of registration shall be furnished by the borrowing society.

(11) No loans will be advanced to any Cooperative Housing Society where the promoters do not deposit in a Cooperative Bank all the monies (including moneys received on account of contribution etc. of members for construction work) received by the Promoters from the prospective members including the Promoters.

(12) No loan will be advanced to any Cooperative Housing Society which has constructed or proposes to constuct more than 50 bungalows under the Tenant Ownership Scheme or more than 75 tenements or flats under The Tenant Copartnership Scheme except where the conditions of allotment of the land or building site to the applicant society by the State Government or Local Bodies warrent a larger number of flats or bungalows.

(13) No borrower society or its member shall be permitted to sub-let, transfer, assign or otherwise deal with a flat or tenement or a bungalow therein to any person except with the prior permission in writing of the Finance Society and the District Deputy Registrar, which permission shall be granted only in the event of death, retirement, transfer of service or dire and uneconomic conditions of the member concerned.

(14) If a member intends to sub-let or give on leave and license basis either the whole or part of his tenement, the offer should first be made to the State Government and the State Government shall pay such compensation as may be fixed by the Managing Committee of the borrowing Society and that in any event the Government will have to pay compensation from the date of offer. If, however, Government fails to agree to take up the tenement within a month of the offer made, it will be competent for the borrowing Society to decide the case according to its Bye-laws.

(15) No further instalments will be granted to borrowing Society in the event of the Finance Society not receiving the Mortgage Deed back from the Sub-Registrar of Assurances within a period of 18 months from the date of registration or within a period of 18 months from the date of execution of the Mortgage Deed whichever is later. This will be without prejudice to the rights of the Finance Society to recover the loan granted to borrowing Society under the Mortgage.

(16) Cooperative Housing Societies will be required to amend their Bye-laws concerning the object clause and to mention the plot on which the Society disires to construct the houses.

5. The period of loan will not exceed 20 years in any event.

6. The rate of interest to be charged by the Society on each loan will be fixed by the Board of Directors at the time of each disbursement and will not exceed 3%, over the Reserve Bank rate on the date of sanctioning the loan, subject to a minimum of 1% over our borrowing rate. Penal interest will be charged at the same rate in cases of default.

7. The loan shall be repaid with interest thereon by quarterly equated instalments.

8. A rebate of ½% will be granted to the borrowing Society if the repayment of instalments of the principal amount and interest are punctual during the year.

9. 4% or such percentage of the amount of loan sanctioned as may be fixed by the Board from time to time will have to be invested by the borrowing Society in the shares of the Finance Society before any or part payment of loan amount is made, which will not be liable for refund for a period of 20 years after repayment of the entire loan.

10. No loan will exceed such percentage of the aggregate value of land and building to be mortgaged to the Society as may be fixed by the Finance Society from time to time.

11. Valuation of the property to be mortgaged shall be made by an authority appointed by the Finance Society.

12. All legal costs, Architect's fees and other charges incidental to the mortgage shall be borne by the borrowing society irrespective of whether the loan is ultimately paid or not for any

reason whatsoever. The Architect's or valuation fees will be as per rates described by the Maharashtra Co-operative Housing Finance Society Ltd. Travelling and out of pocket expenses, if any, will be recovered in addition from the borrowing Societies.

As regards Attorneys' fees, their actual Bill will have to be paid directly by the borrowing Societies. The title to the property will be certified by approved Solicitors in the cases of Societies in Greater Bombay, Poona City and Thana Municipal area. In the cases of Societies situated in other areas of the State the title to the property will ordinarily be certified by the District Government Pleaders, and the Mortgage drawn by the approved Attorneys of the Finance Society whose fees will be paid by the borrowing Societies directly, subject to a maximum of Rs. 500/-. The Bills of Solicitors for certifying the Society's title will be paid as per our Schedule of rates.

13. A sum of Rs. 1,500/- shall have to be deposited in advance to meet valuation and other charges and will not carry any interest.

14. The applicant Society shall have to apply for loan in the prescribed form and submit the plans and estimates and the site plans (each in triplicate) duly prepared by qualified authority and sanctioned by Municipality or any other proper authority. The applicant Society shall have to submit along with the application, the Domicile Certificates of its borrowing members and also Certificates from the Revenue or Income-Tax authorities certifying the annual income of the borrowing members.

15. The Finance Society shall have full authority to reject an application for loan without assigning any reasons.

16. Loan applications of those societies will be considered for sanction of loan which have collected 25 per cent of the amount of their entire scheme from amongst their members, in the case of Bombay, Town of Thana, Sholapur, Poona and Nagpur and in other cases at least 15 per cent must be collected.

17. The sanctioned loan amount will be made available to the applicant Society after it has collected and invested full 40 per cent of the amount of the entire scheme from amongst its members, each member having paid his quota, in the case of Bombay, Town of Thana, Sholapur, Poona and Nagpur and in other cases 20 per cent must be fully invested.

18. Borrowing Societies desirous of repaying the balance of loan earlier than stipulated time may do so by giving three months' clear notice of the same to the Finance Society.

19. Transaction shall ordinarily be completed within a period of three months from the date of intimation of sanction of the loan amount, and the entire loan amount shall be drawn and utilised within such period as may be considered reasonable by the Finance Society for completion of the entire construction work by the Borrowing Society.

20. In the event of the transaction not being completed within three months the borrowing society shall pay interest at 1½ per cent payable on the amount of loan sanctioned, till the transaction is completed. Thereafter the interest shall be at the rate of interest at which the amount of loan is actually advanced. This condition will also apply in the event of full amount of the sanctioned loan being not drawn and utilised within the stipulated time in the completion of construction work.

21. The Mortgaged property shall be insured only through the agency of the Finance Society for the amount of its present and future value above the plinth in the joint names of our Society and the borrowing society with an Insurance Company to be named by the Finance Society against the risk of fire, and if required by the Finance Society, against the risk of riots and Civil commotion and against the earthquake damage including the fire damage caused thereby throughout the period, the mortgage is in force. Insurance premium shall be paid to the Insurers through the Finance Society.

22. All Municipal taxes, charges, bills, etc., as also other charges in respect of property shall be paid regularly by the borrowing Society.

23. If for any reason the Finance Society is of the opinion that the security originally furnished for the loan borrowed from it has become inadequate or is about to become inadequate, the Finance Society shall be competent to call upon the debtor Society to furnish additional security to the Finance Society's satisfaction within a specified time.

24. Failure to comply with the notice shall entitle the Finance Society to recall the loan at once, notwithstanding the original terms on which the loan was advanced.

25. The Finance Society shall be competent to inspect all the records of the debtor society including the Minutes of all Meetings and its property or make such inquiries, regarding the financial position of the debtor Society as and when deemed necessary. The Finance Society shall inspect the mortgaged property at least once a year.

26. The Finance Society shall have the power to recall the loan with interest upto the date of payment in the event of:

(i) the loan granted for the specific purpose being misapplied, and/or
(ii) the suppression of particulars or submission of incorrect particulars by the borrowing Society.

27. During the continuance of the mortgage, the borrowing society shall not add to, alter or amend any of the Bye-laws, Rules and regulations, without the Finance Society's previous consent in writing, and also will not admit and/or enroll any new members, without the Finance Society's previous consent in writing, and shall also not effect any transfers of plots, flats, and/or shares to new members without the Finance Society's previous consent in writing.

28. The borrowing Society shall collect either Standard or Economic rent, from all the tenant members, who shall occupy the tenements. Such rent shall be got approved from the Finance Society before possession of the tenement is given to any tenant member.

29. No loan will be granted for construction of Shops/Godowns/Hall/Garages which shall be and continue to be the property of the applicant Society. The occupants of shops/godowns/garages shall become nominal members of the Society.

30. No advance or further advance, as the case may be, will be made, out of the sanctioned loan, in case it is observed that the borrowing Society has revised its original plans and estimates and proceeded with the construction work, without informing and obtaining approval in writing of the Finance Society of or to the said revised plans and estimates, and also of the local Authority, sanctioning the said plans.

31. It shall always be open the Finance Society to rescind

this Agreement for loan and/or sanction of the loan without assigning any reason.

32. Such other terms and conditions as may be reasonably required by the Attorneys of the Finance Society.

33. Consent for the transfer of flats or blocks or plots or bungalows by the Finance Society would be ordinarily given by the Finance Society in following cases:

Where transfer of tenement or a flat or building is occasioned by:

(i) Death or by succession.
(ii) Retirement or transfer of service.
(iii) Court or forced sales.
(iv) Dire and/or uneconomic circumstances of the member concerned.

34. Subject to condition No. 10 above, maximum limit of loan to any individual member of the borrowing Society shall be limited to 30 months income of the said member or Rs. 24,000/- per annum whichever is less, in the case of Bombay, Sholapur, Poona, Nagpur and Thana, and 36 months income of the member or Rs. 24,000/- per annum whichever is less, in other cases.

35. Communication of acceptance of the borrowing Society's application for loan and/or of the sanction of a loan thereto shall not create any obligation or contract on the part of the Finance Society to advance any loan, the Finance Society exercising absolute discretion to advance the loan as stated in Bye-law No. 101 of the Society's Bye-laws.

Copies and Papers and Documents Required To Be Attached To The Application by the Borrowing Society and are to be marked as Appendices "A" to "N".

1. Appendix 'A' – True copy of the Managing Committee's Resolution which may have the authority to raise loan from the Maharashtra Cooperative Housing Finance Society Ltd.
2. Appendix 'B' – True copy of Registration Certificate.

3. Appendix 'C' — List giving particulars of each member regarding occupation, domicile, annual income and address.
4. Appendix 'C-1' — List of members whose names were communicated to the Asstt./Deputy Registrar at the time of registration as requiring accommodation, duly certified by the Asst. Registrar/Dist. Dy. Registrar.
5. Appendix 'D' — Particulars of the members requiring loan in the prescribed proforma.
6. Appendix 'E' — True copy of the Conveyance Deed. (If the land is purchased outright) or
True copy of the Lease Deed. (If the land is leased).
7. Appendix 'F' — Three copies of approved site plans.
8. Appendix 'G' — Three copies of approved building plans.
9. Appendix 'H' — Three copies of the detailed estimates with detail specifications.
10. Appendix 'H-1' — Three copies of the estimate for each Block or Flat or bungalow including the cost of land and showing the carpet area of each such Block or Flat.
11. Appendix 'I' — True copy of the letter received from the local authorities approving the site plans, building plans etc.
12. Appendix 'J' — True copy of the Commencement Certificate received from the Local authorities.
13. Appendix 'K' — The Balance-Sheet and/or Income & Expenditure Account and a copy of the Annual Report, if any.
14. Appendix 'L' — Three certified copies of the Bye-laws.
15. Appendix 'M' — Copy of the Bank Account showing that all moneys (including moneys received on account of members for construction work) received from the promoters from members and prospective members in-

cluding promoters were deposited in a cooperative bank.

16. Appendix 'N' — Certified copies of the Domicile certificate of each member of the applicant society and also of the income certificate of each member issued by the Income Tax or Revenue authorities as the case may be.

THE PROFORMA OF THE STATEMENT TO BE SUBMITTED BY THE BORROWING SOCIETY GIVING INFORMATION REGARDING EACH MEMBER FOR WHOM THE LOAN HAS BEEN APPLIED FOR

Name of the Society:

1 S. No.	2 Name of the Member	3 Age	4 Occupation	5 Annual Income (To be accompanied by certified copy of certificate issued by the Income Tax or Revenue Authority)

6 Whether he/she is in possession of a tenement in the city/town as a member of any other Co-operative Housing Society or owns any tenement in ownership building or in his/her own right is a property owner	7 Whether the member has in his own name or in the name of any of his dependants any Flat/Bungalow or has he asked for a loan for such anywhere in Maharashtra State.	8 Share Capital invested by him/her so far in the Society.	9 Carpet area of the Flat/Bungalow.

10	11	12	13
Estimated cost of tenement to be constructed including the cost of land.	Amount paid by him/her towards total estimated cost of tenement.	Balance (if any) when and how payable.	Amount of loan required by him/her

14
Remarks

Applicable only to the Tenant Co-partnership type of Society.

II

SCHEME FOR GRANT OF LOANS TO HOUSING CO-OPERATIVE SOCIETIES OF EMPLOYEES OF PUBLIC LIMITED COMPANIES FOR CONSTRUCTION OF HOUSES.

(1) (i) *General requirements*:

The employers must be 'approved' employers, i.e. employers, who in respect of their Ordinary Share Capital, satisfy conditions under Section 27A (1) (f) or (g) of the Insurance Act as made applicable to the Life Insurance Corporation. The employers must be engaged in business, industrial or commercial activities, but not mainly in building activities.

(*ii*) *Employees*:

The employees must be in "Permanent" service of the employer. They must be, at the time of sanctioning of the loan, in active service with the company concerned.

(*iii*) The Societies must admit only permanent employees to their membership and none else.

(iv) *Security*:

Loans will be granted only on the first legal mortgage of properties situated in India. The employer must guarantee the repayment of the principal and payment of interest on the loan.

(v) *Insurance*:

The employees concerned must be covered under endowment, whole life or mortgage redemption plans during the period of the loan. Amount of insurance must be in the aggregate, equal to the amount of the loan outstanding at the beginning of each year.

Every member of the Society must be insured for his proportionate share of the aggregate insurance.

(2) *LOAN*

(i) *Minimum Loan*:

The minimum amount of loan will be Rs. 2½ lakhs.

(ii) *Maximum Loan*:

The maximum amount of loan will be equal to the total of 2½ years' Basic Salary (i.e. total emoluments exclusive of Dearness Allowance, Housing Allowance, Bonus, etc.) of employees concerned subject, however, to a maximum of Rs. 50,000/- in respect of any one employee.

(iii) *Total Loan*:

There will be an over-all limit of Rs. 15 lakhs to the total aggregated loans to all the Housing Co-operative Societies of the employees of any one Employer Public Ltd. Company. The total loan will not exceed 70% of the value of property.

(iv) *Term*:

Loans will be granted for a period upto a maximum of 15 years.

(v) *Interest*:

The rate of interest will be 8% subject to a rebate of 1% for punctual payment.

(3) *Expenses*: All the expenses will be borne by the borrowing Societies.

(4) *Method of Payment*:

(i) *Advance*:

The loan will be advanced in not more than 5 stages,

the final instalment being paid only on completion of the buildings. No instalment will be less than Rs. 25,000/-. At no stage will the total amount advanced be more than 70% of value of the property as at the time of payment of the instalment as estimated by the Corporation's Valuer at the applicant's cost.

(*ii*) *Insurance*:

The property to be mortgaged must be fully insured with the Life Insurance Corporation of India.

(*iii*) *Lease*:

The unexpired term of Lease must be 50 years or more on the date of advance.

SECTION 27A(1) (f) and (g) of the Insurance Act as made applicable to the Life Insurance Corporation.

"27A(1) The Life Insurance Corporation of India shall invest, and at all times keep invested, twenty-five per cent of its controlled fund in Government securities and a further sum equal to not less than twenty-five per cent of the controlled fund in Government securities or other approved securities and shall not invest, or keep invested, any part of the balance otherwise than in any of the following approved investments, namely:—

x	x	x	x
x	x	x	x
x	x	x	x

(f) shares of any company which have been guaranteed by another company, such other company having paid dividends on its equity shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding: Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent. of the paid-up amount of preference and equity shares of the guaranteeing company:

(g) shares of any company on which dividends of not less than four per cent. including bonus have been paid for the five years immediately preceding or for at least five out of the seven years immediately preceding."

ALLOTMENT OF LAND TO CO-OPERATIVE HOUSING SOCIETY

(For Co-operative Housing Society)

APPLICATION FOR THE ALLOTMENT OF A HOUSE BUILDING PLOT UNDER THE LOW INCOME GROUP HOUSING SCHEME AT NORTH OF

To

The Housing Commissioner,
Maharashtra Housing Board,
Esplanade Maidan, Cruickshank Road,
Bombay-1.

Sir,

I on behalf of
Co-operative Housing Society Ltd., hereby apply for the allotment of a house building plot on lease-hold basis, in
Development Scheme, North of

2. My Society requires about Square Yards of land in the Scheme at the rate of square yards to be allotted to each member and an area of square yards for roads and open spaces.

3. On behalf of my Society, I have remitted a sum of Rs. 100.00 as deposit to the Chief Accounts Officer, Maharashtra Housing Board vide his endorsement on this application. My Society also agrees to pay on demand the tentative value of the land at the rate of Rs. 13.00 per square yard.

4. My Society agrees to execute the agreement of lease as may be stipulated by the Maharashtra Housing Board.

5. The required information about the Society and its members is given in the accompanying statement and in the prescribed form. The sworn affidavit/declaration by the members of the Society, as per draft attached to the rules are also enclosed.

Yours faithfully,

Hon. Secretary/Secretary/President,
Co-operative
Housing Society Ltd.

D. A. Accompaniments.
Address :
Date :

Received Rs. 100.00 in cash from the above-named applicant.

Cashier, C.A.O., M.H.B., Bombay.

Accompaniment to the application for the allotment of house building plot under the Low Income Group Housing Scheme at Development Scheme, North of

1. (*i*) Name of the Society.
   (*ii*) Address of the Society.
   (*iii*) Whether the Society has been registered, if so the registration number and date.
   (*iv*) If the Society is unregistered then the probable date by which it is expected to be registered.
   (*v*) Total number of members on the register of the Society.
   (*vi*) Nature of Society — Whether tenant Ownership or Co-partnership or mixed.
   (*vii*) Number of houses/tenements proposed to be constructed by the Society.
2. The detailed information about the individual members of the Society is given in the prescribed form.

(Signature)
Hon. Secretary/President
Co-operative Housing Society Ltd.

PRESCRIBED FORM

To be filled in by individual member of Co-operative Housing Society Ltd.

1. Member's full name (Block letters with surname first).

2. Father's (or husband's NAME in case of a female member) full name (Block letters).
3. Member's full address
4. Member's date of Birth
5. Name and address of the member's employment or business or occupation.
6. Names of member's family (excluding applicant) and relation with the applicant.

Name	*Relation*
i)	
ii)	
iii)	
iv)	
v)	
vi)	
vii)	
viii)	

7. Member's income for twelve months preceding the month in which this application is made and the source or sources from which it is derived.

Source	*INCOME PER ANNUM*
i)	
ii)	
iii)	
iv)	
	Total Rs. per annum

8. The documents annexed in support of the income stated in clause 7 above.
   i)
   ii)
   iii)
   iv)

I (name) hereby certify that the particulars given and statements made above are true and correct to the best of my knowledge and belief.

Date:

(Signature of the Member)
Co-operative Housing Society Ltd.

(Signature)
Secretary/President
Co-operative Housing Society Ltd.

THE DRAFT DECLARATION (AFFIDAVIT) TO BE GIVEN BY THE APPLICATION ON STAMP PAPER OF RS. 3.00 BEFORE THE OFFICER EMPOWERED TO TAKE OATH UNDER THE INDIAN OATHS ACT 1873.

DECLARATION

I of Inhabitant residing at aged about years, on solemn affirmation declare as under:—

That I have read the rules for the allotment of house building plots under the Low Income Group Housing Scheme at Development Scheme, North of .

That my total income from all sources does not exceed Rs. 6,000/- per year at the time of making an application for allotment of a house building plot in the scheme.

That I do not own a tenement nor a house building plot or have I entered into an agreement for the purchase of a tenement or a house building plot in the limits of Greater Bombay.

That no member of my family owns a tenement or a house building plot or has or had entered into agreement for the purchase of a tenement or a house building plot, either in his or her name or jointly with me in the limits of Greater Bombay.

That I have made the application for allotment herein for constructing a house for the use and residence of myself and my family and I am aware that the scheme is meant only for those who do not own any other tenement or a house.

Before me.

CHAPTER IX

DISPUTES AND ARBITRATION

Dispute.

91. *(1)* Notwithstanding[2] [anything contained] in any other law for the time being in force, any dispute touching the constitution, elections of the office-bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of the following:

(*a*) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;

(*b*) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(*c*) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions of section 45, and any person claiming through such a person;

[2] These words were substituted for the words "anything containing" by Mah. 33 of 1963, s. 20 (a).

(*d*) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 45, whether such a surety is or is not a member of the society;

(*e*) any other society, or the Liquidator of such a society.

(2) When any question arises whether for the purposes of the foregoing sub-section, a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

(3) Save as otherwise provided under sub-section (3) of section 93 no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (*1*).

Explanation 1.—A dispute between the Liquidator of a society and [1][the members (including past members, or nominees, heirs or legal representatives of deceased members)] of the same society shall not be referred to the Registrar under the provisions of sub-section (*1*).

Explanation 2.—For the purposes of this sub-section, a dispute shall include—

(*i*) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not;

(*ii*) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(*iii*) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant,

[1] These words and brackets were substituted for the words "the members" by Mah. 33 of 1963, s. 20 (b).

or by its committee, past or present, whether such loss be admitted or not;

(*iv*) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment.

Restrictions on other transactions with non-members.

45. Save as is provided in this Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed.

Limitation.

92. (*1*) Notwithstanding anything contained in the Indian Limitation Act, 1908 but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under the last preceding section shall—

(*a*) when the dispute relates to the recovery of any sum, including interest thereon, due to a society by a member thereof be computed from the date on which such member dies or ceases to be a member of the society;

(*b*) when the dispute is between a society or its committee, and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or legal representative of a deceased officer, deceased agent or deceased servant of the society, or a member, or past member, or the nominee, heir or legal representative of a deceased member, and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(*c*) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be would up under section 102, or in respect of which a nominated committee or an administrator has been appointed under section 78 be six years from the date of the order issued under section 102, or section 78 as the case may be;

(*d*) when the dispute is in respect of an election of an office-bearer of the society, be one month from the date of the

declaration of the result of the election.

(2) The period of limitation in the case of any other dispute except those mentioned in the foregoing sub-section which are required to be referred to the Registrar under the last preceding section shall be regulated by the provisions of th Indian Limitation Act, 1908, as if the dispute were a suit, and the Registrar a Civil Court.

(3) Notwithstanding anything contained in sub-sections (*1*) and (2), the Registrar may admit a dispute after the expiry of the limitation period, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired.

Settlement of disputes.

93. (*1*) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 91 the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal to a nominee, or a board of nominees, appointed by the Registrar.

(2) Where any dispute is referred under the foregoing sub-section, for decision to the Registrar's nominee or board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or board of nominees, and may decide the dispute himself, or refer it again for decision to any other nominee, or board of nominees, appointed by him.

(3) Notwithstanding anything contained in section 91 the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as is provided in sub-section (*1*).

Procedure for settlement of disputes and power of Registrar, his nominee or board of nominees.

94. (*1*) The Registrar, or his nominee or board of nominees, hearing a dispute under the last preceding section shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of documents by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(*2*) Except with the permission of the Registrar or his nominee or board of nominees, as the case may be, no party shall be represented at the hearing of a dispute by a legal practitioner.

(*3*) (*a*) If the Registrar or his nominee or board of nominees is satisfied that a person whether he be a member of the society or not has acquired any interest in the property of a person who is a party to a dispute, he may order that the person who has acquired the interest in the property may join as a party to the dispute; and any decision that may be passed on the reference by the Registrar or his nominee or board of nominees shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.

(*b*) Where a dispute has been instituted in the name of the wrong person, or where all the defendants have not been included, the Registrar or his nominee or board of nominees may, at any stage of the hearing of the dispute, if satisfied that the mistake was *bona fide*, order any other person to be substituted or added as a plaintiff or a defendant, upon such terms as he thinks just.

(*c*) The Registrar, his nominee or board of nominees may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Registrar, his nominee or board of nominees, as the case may be, to be just, order that the name of any party improperly joined whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Registrar, his nominee or board of nominees, as the case may be, may be necessary in order to enable the Registrar, his nominee or board

of nominees effectually and completely to adjudicate upon and settle all the questions involved in the dispute, be added.

(*d*) Any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any of such reliefs; but if he omits to claim for all such reliefs, he shall not forward a claim for any relief so omitted, except with the leave of the Registrar, his nominee or board of nominees.

Attachment before award [1][and interlocutory orders].

95. (*1*) Where a dispute has been referred to the Registrar or his nominee or board of nominees under section 93 or under section 105 or where the Registrar or the person authorised under section 88 hears a person against whom charges are framed under that section, the Registrar or his nominee or board of nominees or, as the case may be, the person so authorised under section 88 if satisfied on enquiry or otherwise that a party to such dispute or against whom proceedings are pending under section 88 with intent to defeat, delay or obstruct the execution of any award or the carrying out of any order that may be made,—

(*a*) is about to dispose of whole or any part of his property, or

(*b*) is about to remove the whole or any part of his property from the jurisdiction of the Registrar.

may, unless adequate security is furnished, direct conditional attachment of the said property, and such attachment shall have the same effect as if made by a competent Civil Court.

(*2*) Where the Registrar, his nominee or board of nominees or the person authorised under section 88 directs attachment of property under the foregoing sub-section, he shall issue a notice calling upon the person whose property is so attached to furnish security which he thinks adequate within a specified period; and if the person fails to provide the security so demanded, the Registrar or his nominee or board of nominees or, as the case may be, the person authorised under section 88 may confirm the order and, after the decision in the dispute or the completion of the

[1] These words were inserted by Mah: 33 of 1963, s-21 (b).

proceedings referred to in the foregoing sub-section may direct the disposal of the property so attached towards the claim if awarded.

(3) Attachment made under this section shall not affect the rights, subsisting prior to the attachment of the property, of persons not parties to the proceedings in connection with which the attachment is made, or bar any person holding a decree against the person whose property is so attached from applying for the sale of the property under attachment in execution of such decree.

[1][(4) The Registrar or his nominee or board of nominees or the person authorised under section 88, as the case may be, may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision in a dispute referred to in sub-section (1) as may appear to be just and convenient.]

Decision of Registrar or his nominee or board of nominees.

96. When a dispute is referred to arbitration the Registrar or his nominee or board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and fees and expenses payable to the Registrar or his nominee or, as the case may be, board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar, and shall, subject to appeal or review or revision, be binding on the parties to the dispute.

Appeal against decision of Registrar of his nominee or board of nominees.

97. Any party aggrieved by any decision of the Registrar or his nominee or board of nominees under the last preceding section, or an order passed under section 95 may, within two months from the date of the decision or order, appeal to the Tribunal.

Money how recovered.

98. Every order passed by the Registrar or a person authorised by him under section 88 or by the Registrar, his nominee or board of nominees under section 95 or 96, every order passed in appeal under the last

[1] Sub-section (4) was added by Mah: 33 of 1963, s. 21 (a).

preceding section, every order passed by a Liquidator under section 105, every order passed by the State Government in appeal against orders passed under section 105 and every order passed in revision under section 154 shall, if not carried out,—

(*a*) on a certificate signed by the Registrar or a Liquidator, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such Court, or

(*b*) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:

Provided that, any application for the recovery in such manner of any such sum shall be made to the Collector, and shall be accompanied by a certificate signed by the Registrar,[2] * * * * Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.

Private transfer of property made after issue of certificate void against society.

99. Any private transfer or delivery of, or encumbrance or charge on, property made or created after the issue of the certificate of the Registrar, Liquidator, or Assistant Registrar, as the case may be, under section 98 shall be null and void as against the society on whose application the said certificate was issued.

Transfer of property which cannot be sold.

100. (*1*) When in any execution of an order sought to be executed under section 98, any property cannot be sold for want of buyers, if such property is in occupancy of the defaulter, or of some person in his behalf, or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Liquidator or the Assistant Registrar, under clause (*a*) or (*b*) of section 98, the Court or the Collector or the Registrar, as the case may be, may, notwithstanding anything contained in any law for the time being in force, direct that the said property or any portion thereof shall be

[2] The words "or by any Assistant Registror to whom the said power has been delegated by the Registrar" were deleted, by Mah: 33 of 1963, s. 22.

transferred to the society which has applied for the execution of the said order, in the manner prescribed.

(2) Where property is transferred to the society under the foregoing sub-section, or where property is sold under section 98 the Court, the Collector or the Registrar, as the case may be, may, in accordance with the rules, place the society or the purchaser, as the case may be, in possession of the property transferred or sold.

(3) Subject to such rules as may be made in this behalf, and to any rights, encumbrances, charges or equities lawfully subsisting in favour of any person, such property or portion thereof shall be held under sub-section (*1*) by the said society on such terms and conditions as may be agreed upon between the Court, the Collector or the Registrar, as the case may be, and the said society. Subject to the general or special orders of the State Government, the Collector or the Registrar may delegate to an officer, not below the rank of an Assistant or the Deputy Collector or the Assistant Registrar, powers exercisable by the Collector or the Registrar under this section.

CHAPTER VIII

DISPUTES AND ARBITRATION

75. *Reference of Dispute.*—A reference of a dispute under section 91 shall be made in writing to the Registrar in Form "P". Wherever necessary, the Registrar may require the party referring the dispute to him to produce a certified copy of the relevant records on which the dispute is based and such other statements or records as may be required by him, before proceeding with the consideration of such reference.

76. *Appointment of Registrar's nominee or board of nominees.*—(1) The Registrar may, by general or special order notified in the *Official Gazette*, appoint any person to be his nominee for deciding disputes arising in any one or more societies situated in such area and for such period as may be specified in the order.

(2) The Registrar may, by order in the *Official Gazette*, appoint a board of nominees consisting of two or more nominees appointed under sub-rule (1), for deciding disputes arising in any one or more societies within such area and for such period as may be specified in the order.

(3) Where a board of nominees is appointed under sub-rule (2), one of the nominees on the board shall be appointed by the Registrar to be the Chairman of the board, who shall fix the date, time and place of hearing disputes referred to the board and carry out necessary correspondence in connection with the disposal of such disputes.

77. *Procedure for hearing and decision of disputes.*—(1) When any dispute is referred to the Registrar's nominee or to a board of nominees for decision and is not decided by him or it within two months or such further period as the Registrar may allow, the Registrar may withdraw the dispute from the nominee or, as the case may be, the board of nominees and decide the dispute himself or refer it again to another nominee or a board of nominees for decision.

(2) The Registrar or his nominee or the board of nominees shall record in English or in Marathi or in Hindi the evidence of the parties to the dispute and witnesses who attend; and upon the evidence so recorded, and upon consideration of any documentary evidence produced by either party, a decision in writing shall be given. Such decision shall be pronounced either at once or on some future date of which due notice shall be given to the parties.

(3) Where any party duly summoned to attend the proceeding fails to appear, the dispute may be decided *ex-parte.*

(4) In deciding the disputes, where there is no unanimous decision, the opinion of the majority of the board of nominees shall prevail. Where the opinion of the nominees on the board is equally divided, the opinion of the Chairman of the board shall prevail.

(5) Any award made decision given or order passed by the Registrar's nominee or Board of nominees or a person authorised under section 88, shall be sent by him or by the Chairman of the Board with all the papers and proceedings of the dispute to the Registrar within 15 days from the date on which it is made, given or passed.

78. *Summonses, notices, and fixing of dates, place, etc. in connection with the disputes.*—(1) The Registrar, his nominee, or the Chairman of the board of nominees may issue summonses or notices at least fifteen days before the date fixed for hearing of the dispute requiring,

(i) the attendance of the parties to the dispute and of witnesses if any; and

(ii) the production of all books and documents relating to the matter in dispute.

(2) Summonses or notices issued by the Registrar or his nominee or the Chairman of the board of nominees may be served through a Mamlatdar, Mahalkari, Tahsildar or any employee of the Co-operative Department or of a federal society or through the Chairman or secretary of the society or by registered post with acknowledgement due. Every person or society to whom summonses or notices are sent for service shall be bound to serve them within a reasonable time.

(3) The officer serving a summons or notice shall, in all cases in which summons or notice has been served, endorse or annex or cause to be endorsed on or annexed to, the original summons or notice, a return stating the time when, and the manner in which, the summons or, as the case may be, notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons or the notice.

(4) The officer issuing the summons or notice may examine the serving officer on oath or cause him to be so examined by the Mamlatdar or other officer through whom it is served and may make such further inquiry in the matter as he thinks fit; and shall either declare that the summons or, as the case may be, notice has been duly served or order it to be served in such manner as he thinks fit.

(5) The mode of serving summonses and notices as laid down in sub-rules (1) to (4) shall *mutatis mutandis* apply to the service of summonses or notices,—

(i) issued by the Registrar or the person authorised by him, when acting under section 83, 84 or 88,

(ii) issued by an auditor, when acting under section 81, or

(iii) issued by a Liquidator, when acting under section 105.

79. *Investigation of claims and objections against any attachment.*— Where any claim or objection has been preferred against the attachment of any property under section 95, on the ground that such property is not liable to such attachment, the Registrar, his nominee or board of nominees shall investigate into the claim or objection and dispose it of on merits:

Provided that, no such investigation shall be made when the Registrar or his nominee or board of nominees considers that

the claim or objection is frivolous.

80. *Procedure for the custody of property attached under section 95.*—(1) Where the property to be attached is moveable property, other than agricultural produce, in the possession of the debtor, the attachment shall be made by actual seizure and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, or of a Receiver, if one is appointed under sub-rule (2) and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

(2) Where it appears to the officer ordering conditional attachment under section 95 to be just and convenient, he may appoint a Receiver for the custody of the moveable property attached under that section and his duties and liabilities shall be identical with those of a Receiver appointed under Order XL in the First Schedule to the Code of Civil Procedure, 1908.

(3) (*i*) Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the debtor from transfering or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(*ii*) The order shall be proclaimed at some place on, or adjacent to, such property by beat of drum or other customary mode, and a copy of the order shall be fixed on a conspicuous part of the property and upon a conspicuous part of the village *chavdi*, and where the property is land paying revenue to the State Government, also in the office of the Collector of the district and in the office of the Mamlatdar or Mahalkari or Tahsildar or any other revenue officer within whose jurisdiction the property is situated.

81. *Procedure for attachment and sale of property for realization of any security given by person in course of execution proceedings.*—The procedure laid down in rules 80 and 83 shall *mutatis mutandis* apply for attachment and sale of property for the realization of any security given by a person in the course of execution proceedings.

82. *Issue of proclamation prohibiting private transfers of pro-*

perty.—The Registrar or Liquidator when acting under clause (a) of section 98 shall at the time of signing a certificate affecting any property, issue a proclamation in Form "Q" and in the case of immovable property shall also forward a copy of the proclamation to the Mamlatdar, Mahalkari or Tahsildar or any other revenue officer within whose jurisdiction the property is situated, who shall cause an entry about such certificate to be made in the Record of Rights.

83. *Procedure for execution of awards.*—(1) Every order or award passed by the Registrar, or the person authorised by him or his nominee or board of nominees under section 95 or 96 shall be forwarded by the Registrar to the society or to the party concerned with instructions that the society or, as the case may be, the party concerned should initiate execution proceedings forthwith according to the provisions of section 98.

(2) If the amount due under the award is not forthwith recovered, or the order thereunder is not carried out, it shall be forwarded to the Registrar with an application for execution along with all information required by the Registrar, for the issue of certificate under section 98. The applicant shall state whether he desires to execute the award by a civil court or through the Collector as provided under section 98 or through the Registrar as provided under section 156.

(3) On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate issued by him under section 98 and a proclamation issued under rule 82 in the manner prescribed therein.

(4) Every order passed in appeal under section 97 shall also be executed in the manner laid down in sub-rules (2) and (3).

84. *Execution of awards or orders in special cases.*—Subject to the provision of section 98, the Registrar may, by an order in writing specially authorise any officer of the Co-operative Department or any officer of a federal society or a Central Bank, on an application made by it, to call for and send awards or orders obtained by any society for execution. The society or societies in respect of which these powers are to be exercised shall be specified in the order.

85. *Transfer of property which cannot be sold.*—(1) When in

execution of an order sought to be executed under section 98 any property cannot be sold for want of buyers, if such property is in the possession of the defaulter or of some person on his behalf, or of some person claiming it under a tittle created by the defaulter subsequent to the issue of the certificate by the Registrar or Liquidator under clause (*a*) or (b) of the said section, the officer conducting the execution shall as soon as practicable report the fact to the Court or the Collector or the Registrar, as the case may be, and the society applying for the execution of the said order.

(2) On receipt of a report under sub-rule (1), the society may, within six months from the date of the receipt of the report or within such further period as may for sufficient reasons be allowed in any particular case by the Court or the Collector or the Registrar, submit an application in writing to the Court, the Collector or the Registrar, as the case may be, stating whether or not it agrees to take over such property.

(3) On receipt of an application under sub-rule (2), notices shall be issued to the defaulter and to all persons known to be interested in the property, including those whose names appear in the Record of Rights as persons holding any interest in the property, about the intended transfer.

(4) On receipt of such a notice, the defaulter, or any person owning such property, or holding an interest therein by virtue of a title acquired before the date of the issue of a certificate under section 98, may within one month from the date of the receipt of such notice, deposit with the Court or the Collector or the Registrar, for payment to the society a sum equal to the amount due under the order sought to be executed together with interest thereon and such additional sum for payment of costs and other incidental expenses as may be determined in this behalf by the Court or the Collector or the Registrar, as the case may be.

(5) On failure of the defaulter, or any person interested, or any person holding any interest in the property, to deposit the amount under sub-rule (4), the Court or the Collector or the Registrar, as the case may be, shall direct the property to be transferred to the society on the conditions stated in the certificate in Form "R".

(6) The certificate granted under sub-rule (5) shall state whe-

ther the property is transferred to the society in full or partial satisfaction of the amount due to it from the defaulter.

(7) If the property is transferred to the society in partial satisfaction of the amount due to it from the defaulter, the Court or the Collector or the Registrar, as the case may be, shall, on the production by the society of a certificate signed by the Registrar, recover the balance due to the society in the manner laid down in section 98.

(8) The transfer of the property under sub-rule (5) shall be effected as follows:

(*i*) In the case of moveable property—

(*a*) Where the property is in the possession of the defaulter himself or has been taken possession of on behalf of the Court or the Collector or the Registrar, it shall be delivered to the society.

(*b*) where the property is in the possession of some person on behalf of a defaulter, the delivery thereof shall be made by giving notice to the person in possession, directing him to give actual peaceful possession to the society, and prohibiting him from delivering possession of the property to any other person.

(*c*) The property shall be delivered to a person authorised by the society to take possession on behalf of the society.

(*ii*) In the case of immovable property—

(*a*) Where the property is growing or standing crop, it may be delivered to the society before it is cut and gathered and the society shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting and gathering it.

(*b*) Where the property is in the possession of the defaulter or of some person on his behalf or some person claiming under a title created by the defaulter subsequent to the issue of a certificate under section 98, the Court or the Collector or the Registrar, as the case may be, shall order delivery to be made by putting the society or any person whom the society may appoint to receive delivery on its behalf in actual possession of the property and if need be by removing any person who illegally refuses to vacate the same.

(*c*) Where the property is in the possession of a tenant or other person entitled to hold the same by a title acquired before the date of issue of a certificate under section 98, the Court or the Collector or the Registrar, as the case may be, shall order delivery to be made by affixing a copy of the certificate of transfer of the property to the society in some conspicuous place on the property and proclaiming to such person by beat of drum or other customary mode at some convenient place, that the interest of the defaulter has been transferred to the society.

(9) The society shall be required to pay expenses incidental to sale including the cost of maintenance of live-stock, if any, according to such scale as may be fixed by the Registrar from time to time.

(10) Where land is transferred to the society under sub-clause (*a*) of clause (ii) of sub-rule (8) before a growing or standing crop is cut and gathered, the society shall be liable to pay the current year's land revenue on the land.

(11) The society shall forthwith report any transfer of property under sub-clause (*b*) or (*c*) of clause (*ii*) of sub-rule (8) to the village accountant for information and entry in the Record of Rights.

(12) The society to which property is transferred under sub-rule (5) shall maintain for each such defaulter a separate account showing all the expenses incurred including payment to outside encumbrances, land revenue and other dues on the property and all the income derived from it.

(13) The society to which property is transferred under sub-rule (5) shall use its best endeavour to sell the property as soon as practicable to the best advantages of the society as well as that of the defaulter, the first option being always given to the defaulter who originally owned the property. The sale shall be subject to confirmation by the Registrar. The proceeds of the sale shall be applied to defraying the expenses of the sale and other expenses incurred by the society and referred to in sub-rules (9) and (12) and to the payment of the arrears due by the defaulter under the order in execution, and the surplus (if any), then be paid to the defaulter.

(14) Until the property is sold, the society to which the property is transferred under sub-rule (5) shall use its best endeavours to lease it or to make any other use that can be made of it so as to derive the largest possible income from the property.

(15) When the society to which property is transferred under sub-rule (5) has realised all its dues, under the order in execution of which the property was transfered, from the proceeds of management of the property, the property, if unsold, shall be restored to the defaulter.

86. *Payment of expenses of decisions of disputes.*—(1) Where the dispute has been referred to the Registrar or his nominee or the board of nominees under section 93, the Registrar may require the party or parties to the dispute to deposit such sum as may, in his opinion, be necessary to meet the expenses including payment of fees to the Registrar or his nominee or the board of nominees.

(2) The Registrar or his nominee or the board of nominees shall have power to order the fees and expenses of determining the disputes, to be paid by the society out of its funds or by such party or parties to the dispute, as he or it may think fit, according to the scale laid down by the Registrar, after taking into account the amount deposited under sub-rule (1).

(3) The Registrar may by general or special order specify the scale of fees and expenses to be paid to him or to his nominee or the board of nominees.

LATEST AMENDMENTS TO MODEL BYE-LAWS OF CO-OPERATIVE HOUSING SOCIETIES [1]

II. OBJECTS

Byelaw No. 2 :-

The purpose of this society is primarily to constitute an organisation of persons who have taken flats in the block or building of flats known as
constructed on the land bearing plot/S. No.
admeasuring Sq. Yds. located at
(referred to in the application for registration as required by Section 10 of the Maharashtra Ownership Flats Act (regulation of the promotion of construction, sale, managment and transfer) Act 1963 and in pursuance of which its object shall be:

(*a*) to obtain a conveyance of right, title and interest in the land and building referred to above from its promoter and to receive all documents of title relating to the property which may be in his possession or power as required by Section 11 of the Maharashtra Ownership Flats Act 1963.

(*b*) to manage administer and maintain the said property in accordance with the Cooperative principles and enforce the obligations of the members to the society and interse.

(*c*) to provide social and other amenities to the members who have taken flats.

(*d*) to borrow monies as and when required for carrying out the objects of the society subject to the provisions made in these byelaws, for regulating the manner and limit of raising loan and funds.

[1] These Amendments are effective from 7th February 1967.

(*e*) to do all other things that may be necessary and expedient for the attainment of the purpose and objects of the society specified in these byelaws.

(*f*) the society shall not act beyond the scope of the above objects without necessary amendments to these byelaws duly approved by the registering authority.

V (A) LANDS & BUILDINGS

Byelaw No. 5 :-

(*a*) The society shall be a legal entity representing all the members who have taken flats for obtaining conveyance of right, title and interest in the land and building, and other documents from the promoter as required by section 11 of the M.O.F. Act 1963, having effective control over its members, looking after the collection of taxes and other outgoing from members and payment thereof, providing common services such as conservancy, lift, garden, compound and watchman, etc., insurance of the building and attending to repairs and maintenance of the building.

(*b*) The value of the land and building thereon together with roads, sewers, drains, parks, gardens and compound and such other items of Capital investment for provisions of common amenities, utilities and services as may finally, determined and certified by the society shall constitute capital of the society and shares and/or loan stock of such value, as would cover the individual member's share herein shall be issued to each member within 4 months from the date of receipt of conveyance of the aforesaid title. The shares so issued shall be deemed to have constitute consideration for the flat taken by him.

Read for the original

Byelaw No. 6 :-

(*a*) Any person who is competent to contract under the Indian Contract Act 1872 and is residing or intending to reside in Bombay City and Suburban Area permanently shall be eligible for admission as a member as per the provision of Section 22 of the Maharashtra Cooperative Societies Act 1960 and Rule 10 of Maharashtra Cooperative Societies Rules 1961.

(*b*) No person shall be eligible for admission as a member

of the society if he has applied to be adjudicated as an insolvent or is an undischarged insolvent, or has been sentenced for any offence other than an offence of a political character or an offence not involving moral turpitude, provided that the disqualification shall not apply where more than five years have elapsed from the date of expiry of such sentence.

(*c*) No person shall be admitted as member unless

(*i*) his written application is approved by a majority of the General Body.

(*ii*) he has paid an entrance fee of Re. 1/-.

(*iii*) he has subscribed and paid for at least 5 shares and has further agreed to subscribe and pay for in lumpsum or by such instalments as may be decided by the society additional shares as would make his total share holding in the society equal to the capital investment required for providing him residential accommodation, common amenities, utilities and services;

(*iv*) he has entered into an agreement for the purchase of flat in the building mentioned in byelaw No. 2 (a) as per provisions of section 4 of Maharashtra Ownership flats Act 1963 read with rule No. 5 of Maharashtra Ownership flats rules 1964.

Note:- This condition shall not be applicable to the promoter who builds and who sells the flats in the building mentioned in byelaw No. 2 (a).

Read byelaw No. 6(a) as 6(4)

Byelaw No. 6 (A) Notwithstanding anything contained in Byelaw No. 6 or any other byelaw in that behalf, the membership of the society may be open to not more than two sympathiser members who should necessarily be as promoters as defined under Section 2(C) of Maharashtra Ownership Flats Act 1963 and who sympathise with the aims and objects of the society and who declare as such.

Read for the original

Byelaw No. 9 (*a*) :—

Every member and every person intending to become a member, shall declare in writing the residential Building, building site if any owned by him or by any of the members of his family, or by any of his dependents (in whole or in

part) any where, and shall state the reason why it is necessary to have a house or plot from the society, and furnish information as per form "E". If on verification or a later date it is found that the information and declaration so furnished by a member or a person intending to become a member is false, he shall be liable for explusion from the society.

Byelaw no. 12(h) & 12(a) deleted.

Byelaw No. 19(1) :- Read "one year" for five years occuring in the 6th line of the Byelaw.

Read for the original

Tenancy Regulation No. 4 :- No tenant shall assign underlet, vacate or part with the possession of the tenement or any part thereof without the previous consent in writing of the General Body of the society.

Tenancy Regulation No. 24(c) :— Delete the words "or violence by any army or mob" occuring in the third line of the said regulation.

A RESUME OF OWNERSHIP FLATS PRICES COMMITTEE'S REPORT

An Ownership Flats Prices Committee was constituted by the Government of Maharashtra consisting of Mr. Homi J. H. Taleyarkhan, Minister for Housing, as Chairman and included Mr. P. G. Kher and Mr. F. M. Pinto, M.L.A.s; Mr. D. S. Borker, Housing Commissioner, Member; Mr. I. A. Dalvi, Special Officer, Member-Secretary of the Committee, and Mr. S. V. Chakradeo, Under Secretary (Housing). The Ownership Flats Prices Committee recommended that a tribunal should be set up to determine the prices of flats "on a reference made to it by the aggrieved flat-purchasers".

The Committee has suggested that, as the promoters have a tendency to charge exhorbitant prices for flats, the tribunal should be guided by the recorded prices of land purchase constituting a major factor in determining the prices of flats. The Committee had also recommended that to control the cost of construction of flats, a ceiling should be imposed on the maximum carpet area and prices of flats.

About the purchase of land, where the promoter buys it from the owner, he will be allowed to charge a reasonable appreciation over and above the originally recorded price—the prevalent market prices of the ownership flats built on the land.

The Committee had recommended that the promoters might be allowed supervision charges at a rate not more than three per cent of the cost, exclusive of the fees of architects and designers. The Committee had felt that the promoters should be required to disclose the prices paid for the land and the

break-up of the cost of construction of the flats to prospective buyers.

It had proposed that financial assistance from the Government, the Maharashtra Housing Finance Co-operative Society or other Government agencies should not be admissible to co-operative housing societies formed under the Ownership Flats Act.

This would best serve the ideal of genuine co-operative housing societies for the needy people. The important measures recommended by the Committee might have far-reaching effects on arresting the soaring prices of ownership flats.

NOTIFICATIONS

URBAN DEVELOPMENT AND PUBLIC HEALTH DEPARTMENT

Sachivalaya, Bombay, 18th September, 1964.

ORDER

Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963.

No. FOB. 1064/4678-E.- In exercise of the powers conferred by section 5 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (Mah. XLV of 1963), the Government of Maharashtra hereby appoints Shri S. L. Ogale, Deputy Secretary to the Government of Maharashtra, Urban Development and Public Health Department, to perform the functions of the officer under that Act.

By order and in name of the Governor of Maharashtra,
V. S. MATHKAR,
Under Secretary to Government.

Sachivalaya, Bombay July 2nd, 1965.

No. FOB. 1064/4678-J.- In exercise of the powers conferred by section 5 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sales, management and transfer)

Act, 1963 (Mah. XLV of 1963), and in supersession of Government Order, Urban Development and Public Health Department, No. FOB. 1064/4678-E, dated the 18th September 1964, the Government of Maharashtra hereby appoints Shri I. A. Dalvi, Special Officer in the Urban Development and Public Health Department to perform the functions of the officer under that Act, with effect from 2nd July 1965 B. N.

By order and in the name of the
Governor of Maharashtra,
S. V. CHAKRADEO,
Under Secretary to Government.

ARCHITECTS UNITED
PUNE-411

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