

SPECIAL CIVIL APPLICATION

*Before the Hon'ble Mr. Justice M. B. Shah and
the Hon'ble Mr. Justice M. R. Calla*

JAIN MECHANTS CO-OP. HOUSING SOCIETY LTD. & ORS. v. H.U.F.
OF MANUBHAI KALYANBHAI SHAH Through Its Manager HARISHBHAI
MANUBHAI SHAH & ORS.*

(A) Constitution of India, 1950 — Arts. 19 (1) (c), 300A — Gujarat Co-operative Societies Act, 1961 (X of 1962) — Secs. 22(2), 24 — Gujarat Co-operative Societies Rules, 1965 — Rule 12(2) — Rule prohibiting Co-operative Housing Society from refusing membership to a person qualified for such membership to whom existing member wants to transfer his plot of land and house — Rule challenged as being violative of fundamental right to form associations guaranteed under Art. 19(1)(c) of the Constitution — Challenge to the Rule also based on the contention that similar provisions in Secs. 22(2) and 24 of the Act were declared *ultra vires* by the High Court in the case of *Amreli District Co-operative Sale and Purchase Union (1984 (2) GLR 1244) — Rule 12 (2), held does not impinge rights of a Co-operative Society under Art. 19(1)(c) and is in conformity with rights of members under Art. 300A of the Constitution to transfer their plots — Validity of Rule 12(2) upheld.*

The contention relating to an absolute and unfettered right in favour of the Society to admit, deny or refuse the membership cannot be accepted for the simple reason that according to this Division Bench decision (*1984 (2) GLR 1244*) itself as mentioned in para 54 at page 1298 a right to be considered for being a Member has been recognised and consideration would always mean a fair consideration. Further refusal of membership on flimsy and trivial grounds has also been left open to the challenge and the remedy of the aggrieved person and the right to move in the Court by regular civil action or Civil Court or before the Registrar by invoking his special jurisdiction in such cases has been recognised. Once it is held that there is a right to be considered for being a Member and the consideration means a fair consideration, it is implicit in the very nature of things that the Membership cannot be refused or denied at pleasure and in case the Membership is refused on any flimsy or trivial ground, the matter can be agitated before the Court or the concerned authority. Held that the Society is not clothed with such unfettered power and if at all the Society refuses or denies membership on some flimsy and trivial ground, it will be open to the aggrieved party to move the Courts or the authorities under the Act. When there is a right and remedy available to the person, who has been denied the membership, it does not stand to reason to accept the contention that the petitioner-Society has any such absolute right. (Para 8)

The challenge to this Rule is based on the Division Bench decision of this Court in *Amreli Dist. Co-operative Sale and Purchase Union, 1984 (2) GLR 1244*. However, Court has considered the import of this decision while appreciating the contention No.1 with regard to the petitioner-Society's absolute right to deny or refuse membership. Its validity has to be examined on the anvil and scope of the right claimed by the petitioner-Society under Art. 19(1)(c) of the Constitution of India. There is no room for doubt that the said Article gives the right to form Association and no fetters can be imposed on such a right.

* Decided on 1-8-1994. Special Civil Application No. 4410 of 1981 against the Order dt. 15/6/1981 passed by Joint Registrar, Co-operative Societies in Revision Application No. 178 of 1980.

The contention of the learned Counsel of the petitioner is that any check on the Society's right on the question of admitting, denying or refusing membership will be violative of the right to form Association and according to him, his contention is fully covered by the decision of the Gujarat High Court in *Amreli District Co-operative Sale and Purchase Union Ltd.'s case* (supra) and he strenuously argued that when Secs. 22(2) and 24 of the Act have been struck down by the Division Bench, Rule 12(2) of the Rules also should be struck down. He submitted that it depends upon the sweet will of the Society to admit or deny or refuse membership to any person without assigning any reason and even if no reason is given, such a decision is beyond challenge. Court has already rejected this contention of the learned Counsel of the petitioner in the earlier part of this judgment while considering first contention. So far as right to form Association is concerned, in the facts of this case, Court find that the right to form Association has already been accomplished and the same is not in question in this petition. The point for consideration is as to whether any association, which has been formed and registered under the Act, is supposed to act in accordance with the provisions of the Act and the Rules framed thereunder or not and as to whether the terms in which Rule 12(2) is couched put any fetter on the rights of the petitioner-Society and whether it does not make out a case of reasonable classification so as to sustain the validity of Rule 12(2). (Para 12)

Composition of the Co-operative society is concerned, there cannot be any objection to statutory interference. The composition of the Co-operative society certainly covers the issue with regard to the membership and the right of the Society to admit, refuse or deny such membership and such decision is also amenable to statutory interference as has been held by the Supreme Court in *Daman Singh's case*. (Para 12)

The provisions contained in Rule 12(2) of the Rules are in conformity with the rights of the members of the petitioner-Society with regard to the transfer of the plot under Art. 300 A of the Constitution of India and there is nothing in Rules 12(2) which may seek to impinge upon the Society's rights under Art. 19(1)(c) of the Constitution of India and to this limited extent the decision of the Division Bench in *Amreli District Co-operative Sale and Purchase Union*, 1984 (2) GLR 1244 stands diluted by what has been held by the Supreme Court in *Daman Singh's case* (AIR 1985 SC 973) particularly in the end of para 9 thereof after considering the decision in *Damyanti v. Union of India* (AIR 1971 SC 966). In view of the decision of the Constitution Bench of the Supreme Court there is no basis to hold Rule 12(2) of the Rules to be *ultra vires* of Art. 19(1)(c) of the Constitution of India and while upholding the right of the respondent No. 2 to transfer the plot in question subject to the bye-laws of the petitioner-Society we hold that Rule 12(2) of the Rules is *intra vires* of Art. 19(1)(c) of the Constitution of India. (Para 12).

(B) Constitution of India, 1950 — Art. 19(1)(c) — Gujarat Co-operative Societies Act, 1961 (X of 1962) — Secs. 22, 24 — Gujarat Co-operative Societies Rules, 1965 — Rule 12 — Rights of a society governed by the Act in the matter of admission of members — Society, held, does not have absolute and unfettered right to admit, deny or refuse membership — The rights of such society in the matter of its composition are amenable to statutory interference.

The contention relating to an absolute and unfettered right in favour of the Society to admit, deny or refuse the membership cannot be accepted for the simple reason that according to this Division Bench decision (*1984 (2) GLR 1244*) itself as mentioned in para 54 at page 1298 a right to be considered for being a Member has been recognised and consideration would always mean a fair consideration. Further, refusal of membership on flimsy and trivial grounds has also been left open to the challenge and the remedy of the aggrieved person and the right to move the Court by regular civil action or Civil Court

or before the Registrar by invoking his special jurisdiction in such cases has been recognised. Once it is held that there is a right to be considered for being a Member and the consideration means a fair consideration, it is implicit in the very nature of things that the Membership cannot be refused or denied at pleasure and in case the Membership is refused on any flimsy or trivial ground, the matter can be agitated before the Court or the concerned authority. Thus, we find that the Society is not clothed with such unfettered power and if at all the Society refuses or denies membership on some flimsy and trivial ground, it will be open to the aggrieved party to move the Court or the authorities under the Act. When there is a right and remedy available to the person, who has been denied the membership, it does not stand to reason to accept the contention of Mr. Zaveri that the petitioner-Society has any such absolute right. (Para 8)

When the aggrieved person may approach the Court or the competent authority, there is no basis for the argument that the decision of the society to admit any one to membership or to deny or refuse the same is not open to challenge. (Para 8).

As regards societies which from the inception are governed by the statute, so far as composition of such societies, there cannot be any objection to statutory interference. The composition of the Co-operative Society certainly covers the issue with regard to the membership and the right of the society to admit, refuse or deny such membership and such decision is also amenable to statutory interference. (Para 12)

(C) Gujarat Co-operative Societies Act, 1961 (X of 1962) — Secs. 22(1), 28(2) — HUF whether can become member of a Co-operative Society — Held in the affirmative.

It was submitted that Sec. 22(1) excludes eligibility for membership in all other cases except those mentioned in the section and since HUF is not mentioned in any clause of the section, it stands excluded and only such an individual may become the member who is competent to contract under the Indian Contract Act, 1872 and even if an HUF is competent to contract under the Indian Contract Act, 1872, the inclusion of an individual only in this section excludes the HUF from eligibility for the purpose of membership of the Society. (Para 9)

As per the decision of the Apex Court in *W. T. Officer v. C. K. Mammed* (AIR 1981 SC 1269) read with *I. T. Commissioner v. Sodra Devi* (AIR 1957 SC 832), there is no scope for doubt that the HUF may be considered as a single unit and thus there is nothing in the Act which prevents a HUF from becoming member of a Co-operative Society. (Para 10)

(D) WORDS & PHRASES — “Individual” — Expression can include group of individuals as also joint families.

In *I. T. Commissioner v. Sodra Devi* (AIR 1957 SC 832) the Supreme Court held that the word “individual” does not mean only a human being but is wide enough to include a group of persons. In *W.T. Officer v. C. K. Mammed* (AIR 1981 SC 1269) it was held *Amreli District Co-operative Sale and Purchase Union v. State of Gujarat* (1) held stand diluted by *Daman Singh v. State of Punjab*.

Daman Singh v. State of Punjab (2), followed.

Damyanti v. Union of India (3), *Karvenagar S. G. R. Sanshtha v. State* (4), *Bhandara District Central Co-operative Bank v. State of Maharashtra* (5), *Mulshanker Kunverji v. Juvansinhji* (6), *Raj Rani v. Delhi Administration* (7), referred to.

(1) 1984 (2) GLR 1244 (2) AIR 1985 SC 973 (3) AIR 1971 SC 966
(4) AIR 1989 Bom. 392 (5) AIR 1993 SC 59 (6) 1979 GLR 878
(7) AIR 1977 SC 1900

by the Supreme Court that the term “individual” can include a group of individuals who form a unit by reason of their birth. (Paras 9, 10)

Sheetal Prasad Gupta v. State (8), R. H. Shah v. H. J. Joshi (9), Ram Krishan v. Delhi State (10), Sangram Singh v. Election Tribunal (11), Co-operative Central Bank v. Industrial Tribunal (12), Kishanlal v. Co-operative Central Bank (13), Mahavirprasad v. M. S. Yagnik (14), I.T. Commissioner v. Salem District Urban Bank (15), Subramaniam v. Additional W.T. Officer (16), B.K. Garad v. Nasik Merchant Co-operative Bank (17), referred to.

I.T. Commissioner v. Sodra Devi (18), W.T. Officer v. C. K. Mammed Kayi (19), relied on.

S. K. Zaveri, for the Petitioner.

Mihir H. Joshi for *K. S. Nanavati*, for Respondent No. 1.

J. G. Shah, for Respondents Nos. 2/1, 2/2 and 3.

Kamal M. Mehta, A.G.P. for Respondent No. 4

CALLA, J. The petitioner No.1 is the Co-operative Housing Society originally registered under the Bombay Co-operative Societies Act, 1925 and later on deemed to have been registered under the Gujarat Co-operative Societies Act, 1961 (which will be hereinafter referred to as “the Act”). Petitioners Nos. 2 and 3 are the President and Secretary of the Society respectively. It is the case of the petitioner-Society that Members of the Society are allotted sub-plots from the land acquired by the Society and they hold land as lessees from the Society. Respondent No. 2 - Ramanlal Jeshingbhai Shah was admitted as a Member of the Society in 1954 on a transfer of shares by one Shri Trikamlal Maneklal and was allotted sub-plot No. 31. Respondents No. 2, subsequently applied to join Respondents No. 3, i.e. Kantaben Ramanlal Shah as a joint holder of the plot and she was also admitted as a Member of the Society and thus sub-plot No. 31 was jointly allotted to Respondent Nos. 2 and 3. Respondents Nos. 2 and 3 did not construct any building on the said sub-plot. Respondent No. 2 sent a letter dated 23-1-79 to the Secretary of the Society stating therein that he intends to sell the said plot No. 31 to Manubhai Kalyanbhai Shah’s Hindu Undivided Family of Ashwin Society, Ellis Bridge, Ahmedabad. In the aforesaid letter dated 23-1-79 the respondent No. 2 also mentioned that the Managing Committee of the Society in its meeting held on 20-11-63 had resolved that a transfer fee of Rs. 3,000/- should be paid for getting a plot transferred in the name of the transferee and further that by Resolution dated 14-4-68 the transfer fee was increased to Rs. 5,000/- and on that basis he intended to transfer the aforesaid plot No. 31 to the H.U.F. of Manubhai Kalyanbhai Shah. He also enclosed a cheque of Rs. 5,000/- and share certificates for Membership shares No. 311 to 320 and requested that the same be transferred to the above referred H.U.F. Manubhai Kalyanbhai Shah - also sent a letter to the petitioner-Society written on the very same date, i.e., 23-1-79 stating that he had decided to purchase plot No. 31 from Ramanlal Jeshingbhai Shah, who had agreed to sell the same to him and thus claimed Membership of the Society. The Secretary of the petitioner-

(8) AIR 1990 Patna 64	(9) AIR 1975 SC 1470	(10) AIR 1956 SC 476
(11) AIR 1955 SC 845	(12) AIR 1970 SC 245	(13) AIR 1946 Nag. 16
(14) AIR 1960 Bom. 191	(15) AIR 1940 Madras 612	(16) AIR 1961 AP 75
(17) AIR 1984 SC 192	(18) AIR 1957 SC 832	(19) AIR 1981 SC 1269

Society by his letter dated 3-2-79 informed the Respondent No. 2 that there had been no meeting of the Managing Committee on 20-11-63 as alleged by the respondent No. 2 in his letter dated 23-1-79 and further mentioned that according to bye-laws of the Society it was not possible to transfer the plot as requested by him and the cheque of Rs. 5,000/- and the 10 share certificates were returned. It was also stated by the petitioner-Society in the earlier correspondence, i.e., through letter dated 22-2-78 that the respondent No. 2 was also informed that according to the existing bye-laws of the Society, the society was entitled to half premium, i.e., 50 % of the profit realizable from the transfer of the said sub-plot and that in case of a transfer, which took place in 1973, the Society had received 50 % of the premium. Respondent No. 2 was further informed that ownership of the land vested in the Society and no Member can transfer the plot of his own, without obtaining permission of the Society in writing and that if he intends to transfer the said plot, the Society be informed accordingly and thereupon the Society would invite offers by advertisement and if any such offer is acceptable to the Managing Committee, then alone the transfer is permitted. Despite that, the respondent No. 2 by his letter dated 28-3-79 informed the petitioner-Society that he had sold out the above sub-plot to the H.U.F. of Manubhai Kalyanbhai Shah on or about 15-3-79 by a registered sale deed and requested to effect the transfer of the said sub-plot in the record of the Society in the name of the said H.U.F. The respondent No. 2 did not obtain the permission of the Society before effecting the said sale and thus acted contrary to the provisions of the Act, Rules and the bye-laws of the Society and that the respondent No. 2 had no right to sell or transfer his right, title or interest in the said plot or the shares of the Society and that the sale was in violation of and contrary to bye-laws. The Society through its notice dated 1-5-79 determined the lease with effect from 31-8-79 and thus three months time was given to them after the receipt of the aforesaid notice and they were required to collect the due amount in respect of the said plot No. 31.

2. The respondent No. 1 thereupon preferred an Appeal under Sec. 24 of the Gujarat Co-operative Societies Act, 1961 (which will be hereinafter referred to as "the Act") on 9-7-79 stating that the petitioner-Society had refused to admit him to its Membership in terms of the notice dated 1-5-79. The petitioner-Society appeared before the appellate authority and filed its written objections on 30-8-79 stating that the Appeal may not be entertained. The District Registrar, Co-operative Societies (City Division), Ahmedabad decided this Appeal by his order dated 28-5-80 and directed the petitioner-Society to admit the Respondent No. 1 as the Member of the Society in place of respondent No. 2. Aggrieved from the judgment and order passed by the District Registrar, Co-operative Societies (City Division), Ahmedabad on 28-5-80, petitioner preferred a Revision Application before the Joint Registrar of the Co-operative Societies, Gujarat State, Ahmedabad and this Revision Application was registered at Sr. No. 178 of 1980 under Sec. 155 of the Act. This Revision Application was heard and decided by the Joint Registrar and he dismissed the Revision Application confirming the order passed by the District Registrar, Co-operative Societies (City Division), Ahmedabad. Respondent No. 2 appeared before the Joint Registrar and filed his Purshish in the said Revision Application claiming continuing Membership of the Society and the Society was conveyed accordingly. It is against this order of the Joint Registrar, Co-operative Societies, Gujarat State, Ahmedabad passed on 15-6-81 read with the order dated 28-5-80 passed by the

District Registrar, Co-operative Societies (City Division) Ahmedabad, that the present Special Civil Application has been preferred by the petitioners on 24-10-81. A returnable notice was issued on 19-11-81 by the Single Bench and on the very same date *ad interim* relief restraining the respondent No. 1 from raising any construction on the land was also granted. Affidavit-in-reply dated 18-12-81 was filed by one Shri Harishbhai Manubhai Shah, i.e., the Manager of H.U.F. of Manubhai Kalyanbhai Shah seeking to traverse the petitioners' claim in the Special Civil Application. It has been stated in the affidavit that respondent No. 2 had executed an agreement to sell on 12-10-78 in respect of the plot in question and the same was sold out by respondent No. 2 by way of a registered sale deed to Manubhai Kalyanbhai Shah for Rs. 94,000/- and on 24-11-78 an Application was made seeking the permission for this transaction in between the parties to the competent authority and the permission was granted on 17-1-79. Necessary formalities and the legal procedure, which was required to be done in this regard, were adopted by the respondents for this transaction in between the parties and ultimately on 15-3-79 the sale deed was executed by respondent No. 2 in favour of Manubhai Kalyanbhai Shah and, thereafter, on 9-7-79 an Application was made to the District Registrar, which was decided by his order dated 8-5-80 directing the petitioner-Society to give an entry to the respondent No. 1 (H.U.F) as a Member of the petitioner-Society but the petitioner-Society did not do anything in this regard and, therefore, H.U.F. was compelled to move the authority for giving effect to the Membership to the respondent No. 1 in the petitioner-Society. A notice was then issued by the respondent No. 2 to the petitioner-Society to transfer the said sub-plot No. 31 in the name of Manubhai Kalyanbhai Shah (H.U.F.) on 23-1-79 and a cheque of Rs. 5,000/- alongwith the notice was also sent with the request to accept the amount and transfer the said sub-plot. But the petitioner-Society replied that it was not in a position to transfer the said sub-plot and the cheque was returned to the respondent No. 2. Reference has been made to the order passed by the District Registrar on 8-5-80 in the Appeal and the further order passed on 15-6-81 in the Revision Application. Reference has also been made to the provisions of Sec. 22 of the Act and it has been prayed that the petition filed by the petitioner-Society was not tenable.

3. On 27-1-82 it was recorded by the Single Bench that vires of Rule 12(2) of the Gujarat Co-operative Societies Rules, 1965 as amended in 1975 being under challenge, the petition be placed before the Division Bench for admission. The Division Bench passed an order to continue the *ad-interim* relief till further order and the Rule was issued on 9-3-82 with the order that the matter be heard in October, 1982.

4. During the pendency of this Special Civil Application, Civil Application No. 3992 of 1985 was moved by the petitioner alongwith the copy of the death certificate of respondent No. 2 and a copy of Will dated 1-1-82 executed by respondent No. 2. As per the death certificate respondent No. 2 died on 19-3-85 and, therefore, Narendra Ramanlal Shah and Suresh Ramanlal Shah were sought to be substituted as respondents Nos. 2/1 and 2/2 and this Civil Application has been granted.

5. On behalf of the petitioner-Society the learned Counsel Mr. Zaveri raised following contentions :

- (i) The petitioner-Society had an absolute right to admit, deny or refuse Membership to anyone without assigning any reasons whatsoever and such a decision of the petitioner-Society was not open to challenge. It is the pleasure of the society to associate or not to associate.
- (ii) The membership of the petitioner-Society was open only to individuals and no HUF was eligible to be its member.
- (iii) That it was a tenant-owner society and the respondent No. 2 had no ownership right over the plot in question so as to transfer the same of his own without the permission on the petitioner-Society.
- (iv) Rule 12(2) of the Rules was invalid, violative and *ultra vires* of the petitioner-Society's right under Art. 19(1)(c) of the Constitution of India as Secs. 24 and 22(2) of the Act have already been held to be invalid by the Division Bench of the Gujarat High Court itself in *Amreli District Co-operative Sale and Purchase Union v. State* (1984 (2) G.L.R. 1244) and on the application of the reasoning of this decision Rule 12(2) of the Rules cannot withstand the challenge thrown to it in the Special Civil Application by the petitioner-Society.
- (v) That there was no application by respondent No. 1 in the prescribed form and in accordance with the bye-laws for membership and there was no question of accepting the transfer of the plot in favour of the respondent No. 1 until he becomes a member of the petitioner-Society.
- (vi) Petitioner-Society was entitled to get 50 % of the premium and since the respondent No. 2 did not agree to pass on 50 % of the premium to the petitioner-Society, the petitioner-Society was fully justified in not accepting the transfer of the plot in question by respondent No. 2 in favour of respondent No. 1 and returning the cheque of Rs. 5,000/- sent by respondent No. 2.
- (vii) The impugned orders passed by the District Registrar as upheld by the Jt. Registrar were unlawful. Mr. Zaveri learned Counsel for the petitioner-Society has placed reliance on the following cases :
 - (a) 1984 (2) G.L.R. 1244
(*Amreli Dist. Co-op. Sale and Purchase Union v. State*)
 - (b) AIR 1971 SC 966 (*Damyanti v. Union of India*)
 - (c) AIR 1989 Bombay 392 (*Karvenagar S. G. R. Sanstha Maryadit v. State*)
 - (d) AIR 1993 SC 59
(*Bhandara Dist. Central Co-op. Bank Ltd. v. State of Maharashtra*)
 - (e) 20 G.L.R. 878 (*Mulshanker Kunverji v. Juvansinhji*)
 - (f) AIR 1977 S.C. 1900 (*Raj Rani v. Delhi Admn.*)

6. On the other hand Mr. Mihir Joshi, learned Counsel appearing for the respondent No. 1 contended as under :

- (i) Even if the petitioner-Society is taken to be a tenant-owner Society and assuming that the respondent No. 2 had no ownership right over the plot in question, his right to transfer the plot cannot be dependent at the sweet will of the petitioner-Society and he being the allottee of the plot could certainly

transfer his rights in relation to the same to any party subject to the substantial compliance of the requirements of the bye-laws of the petitioner-Society.

- (ii) The requirements of the bye-laws of the petitioner-Society with regard to the application by respondent No. 1 and the transfer of the plot by respondent No. 2 in favour of respondent No. 1 stood substantially complied with.
- (iii) The petitioner-Society had no absolute, unfettered right to deny or refuse the Membership on any flimsy or trivial ground and such denial or refusal by the petitioner-Society was open to challenge in accordance with the provisions of the Act and the Rules.
- (iv) There is no prohibition in the bye-laws against a H.U.F. becoming a member of the petitioner-Society and even if an individual is eligible to be a Member, H.U.F. being a group of persons forming a Unit is a natural Unit and is, therefore, duly included in the term "individual".
- (v) Requirement of the payment of 50 % of the premium to the petitioner-Society has been accepted by the authors of the impugned orders and, therefore, the petitioner-Society's grievance in this regard is wholly misconceived.
- (vi) Rule 12 (2) of the Rules correctly balances the right to form Association under Art. 19(1)(c) of the Constitution of India and the right of the respondent No. 2 under Article 300A of the Constitution of India and the provision of Rule 12(2) of the Rules does not essentially regulate the composition of the Society including the right relating to Membership. Rule 12(2) is sustainable and cannot be struck down on the analogy of the reasoning contained in the Division Bench decision in the *case of Amreli District Co-operative Sale and Purchase Union* (supra).
- (vii) The impugned orders did not suffer any infirmity and did not warrant any interference under Art. 226 read with Art. 227 of the Constitution of India.

Mr. Joshi, learned Counsel for respondent No. 1 has placed reliance on the following cases :

- (A) AIR 1985 SC 973 (*Daman Singh v. State of Punjab*)
- (B) AIR 1990 Patna 64 (*Sheetal Prasad Gupta v. State*)
- (C) AIR 1975 SC 1470 (*R. H. Shah v. H. J. Joshi*)
- (D) AIR 1956 SC 476 (*Ram Krishan v. Delhi State*)
- (E) AIR 1955 SC 845 (*Sangram Singh v. Election Tribunal, Kotah*)
- (F) AIR 1970 SC 245 (*Co-operative Central Bank Ltd. v. Ind. Tri.Hyderabad*)
- (G) AIR (33) 1946 Nag. 16 (*Kisanlal v. Co-operative Central Bank, Seoni*)
- (H) AIR 1960 Bombay 191 (*Mahavirprasad v. M. S. Yagnik*)
- (I) AIR 1940 Madras 612 (*I. T. Commissioner v. Salem Dist. Urban Bank*)
- (J) AIR 1961 AP 75 (*Subramanyam v. Addl. W. T. Officer*)
- (K) AIR 1957 SC 832 (*I.T.Commissioner v. Sodra Devi*)
- (L) AIR 1981 SC 1269 (*W. T. Officer, Calicut v. C. K. Mammed Kayi*)
- (M) AIR 1984 SC 192 (*B. K. Garad v. Nasik Merchants Co-op. Bank Ltd.*)

7. Mr. J. G. Shah, learned Counsel appearing on behalf of respondents Nos. 2/1, 2/2 and 3 at the fag end of the arguments while supporting the arguments of the petitioners on 29-7-94 filed affidavit of one Shri Ashokbhai Babulal Shah, who claimed himself to be the Power of Attorney Holder on behalf of respondents Nos.

2/1 and 2/2 stating therein that respondent No. 2 had filed Civil Suit No. 3391 of 1981 in the City Civil Court at Ahmedabad. Such an affidavit having no direct bearing or any of the points urged before us cannot be entertained at this stage. Hence, we do not find it either necessary or purposeful to take the same into consideration.

8. We have heard learned Counsel for both the sides. Mr. Zaveri heavily relied upon *1984 (2) GLR 1244* (supra) and submitted that the petitioner-Society has an absolute right to deny or refuse Membership to anyone without assigning any reason as it has been held in the aforesaid decision that there is in fact no right, statutory or otherwise, for any person within the area of operation of a co-operative Society to become a member and that it is for the Society to determine as to whether a particular person seeking membership should or should not be admitted to the Society. It has been further held that open membership does not mean that anybody can demand admission to any co-operative society. Mr. Zaveri urged that it only means that the Society must keep its door open for all such persons who are prepared to subscribe to their objectives. As against it, it was pointed out by Mr. Joshi that in para 55 of the Division Bench decision it has been held as under :

“In any case, an aggrieved person has always a right to move the Courts by seeking appropriate remedies by regular civil action in Civil Court or before Registrar by invoking his special jurisdiction where the membership is refused on flimsy and trivial grounds ;”

We have considered the question of the right of the Society to admit, deny or refuse the membership and in the light of the observations relied upon by Mr. Zaveri and pointed out by Mr. Joshi, we are of the opinion that the contention relating to an absolute and unfettered right in favour of the Society to admit, deny or refuse the membership cannot be accepted for the simple reason that according to this Division Bench decision (*1984(2) GLR 1244*) itself as mentioned in para 54 at page 1298 a right to be considered for being a member has been recognised and consideration would always mean a fair consideration. Further, refusal of membership on flimsy and trivial grounds has also been left open to the challenge and the remedy of the aggrieved person and the right to move the Court by regular civil action or Civil Court or before the Registrar by invoking his special jurisdiction in such cases has been recognised. Once it is held that there is a right to be considered for being a member and the consideration means a fair consideration, it is implicit in the very nature of things that the membership cannot be refused or denied at pleasure and in case the Membership is refused on any flimsy or trivial ground, the matter can be agitated before the Court or the concerned authority. Thus, we find that the Society is not clothed with such unfettered power and if at all the society refuses or denies membership on some flimsy and trivial ground, it will be open to the aggrieved party to move the Court or the authorities under the Act. When there is a right and remedy available to the person, who has been denied the membership, it does not stand to reason to accept the contention of Mr. Zaveri that the petitioner-Society has any such absolute right. When the aggrieved person approaches the Court or the competent authority, there is no basis for the argument that the decision of the Society to admit any one to membership or to deny or refuse the same is not

open to challenge. The first contention raised by Mr. Zaveri, therefore, fails and is hereby rejected.

9. Mr. Zaveri referred to bye-law No. 7 of the petitioner-Society. Since Bye-law Nos. 7 and 8 deal with the question of membership, the same are reproduced as under :

“7. All persons who have signed the application for Registration are original members. Other members shall be selected by the Committee provided that all members shall belong to the Jain Caste. Two adverse votes are sufficient to exclude an applicant. Every person shall pay Rs. 5/- on applying for admission for which he shall receive a copy of the bye-laws. In case where the application is refused, the entrance fee shall be returned. That no member shall be allowed to hold a plot or build thereon if he is already a tenant member of another Society.

Note : Resident is a person who maintains a house or tenement which he occupies periodically.

8. Any unregistered society (herein called “ the Represented-Society”), in connection with the Jain caste, or the resident in the society from time to time appoint a representative to be a member of the society and such member shall hold....

There is nothing in the bye-law so as to restrict the membership to individuals only or to prohibit the H.U.F from being a member. However, Mr. Zaveri, learned Counsel for the petitioner-Society, also made reference to Sec. 22(1)(a). Section 22(1)(a) and (b) is reproduced as under for ready reference :

“22. (1) Subject to the provisions of Sec. 25, no person shall be admitted as member of a society except the following, that, to say-

- (a) an individual, who is competent to contract under the Indian Contract Act, 1872;
- (b) a firm, company, or any other body corporate constituted under any law for the time being in force or society registered under the Society Registration Act, 1860;

Mr. Zaveri has submitted that this Section excludes eligibility for membership in all other cases except those mentioned in this section and since H.U.F. has not been mentioned in any clause of this Section, it stands excluded and only such an individual may become the member, who is competent to contract under the Indian Contract Act, 1872, and even if a H.U.F. is competent to contract under the Indian Contract Act, 1872 the inclusion of an individual only in this section excludes the H.U.F. from eligibility for the purpose of membership of the Society. Mr. Joshi has argued that Sec. 22(1) has to be read alongwith the provisions contained in Sec. 28(2,) which is reproduced as under :

“ 28(2) Where a share of society is held jointly by more than one person, each such person shall have, in the absence of preceding person or persons a right to vote;”

The terms in which Sec. 28(2) has been enacted make the legislative intent very clear inasmuch as holding of the share of the Society jointly has been made permissible by more than one person. Thus, any group of persons may jointly hold the share of the society and the entry of a group of individuals to the Membership of the Society cannot be forbidden. Mr. Joshi placed reliance on the following observation from *AIR 1957 SC 832* :

"Whereas the word "individual" is narrower in its connotation being one of the units for the purpose of taxation than the word "assessee", the word "individual" has not been defined in the Act and there is authority for the proposition that the word "individual" does not mean only a human being but is wide enough to include a group of persons forming a unit."

The question raised for consideration before the Apex Court in this case was on the construction of Sec. 16(3) of the Income-Tax Act and it has been held that any group of persons forming a unit is included in the term "individual". The view taken by the Supreme Court in this case was also followed in *AIR 1981 SC 1269* (supra) and in Para 6 of the judgment at page 1273 it has been observed as under:

"In our view the specific mention of Hindu undivided family in the section does not result in the exclusion of group of individuals who only form a unit by reason of their birth like a Mapilla Tarwad from the operation of the section. It is difficult to accept the argument that if term "Individual" was intended to include joint families or Undivided Families it was redundant to specify Hindu undivided families."

It has been further observed in para 7 of this decision that "in the context of the argument that the term "individual" can refer only to a single human being it will be apposite to refer to what this Court has observed in *Commr. of Income-tax, Madhya Pradesh and Bhopal v. Sodra Devi*, 32 ITR 615 : (AIR 1957 SC 832)". And also a passage from AIR 1957 SC 832 has been quoted and it has been observed as under :

"The contention that because there are references to 'wife', daughter' and 'child' of an individual in Sec. 4 the term "individual" in Sec. 3 should be construed as referable to a single human being cannot obviously be accepted. Similarly absence of provisions similar to those applicable to Hindu Undivided Family for assessing group of individuals who form non-Hindu undivided families (provisions like Sec. 5(1)(ii)) cannot affect or control in any manner the charging section. On construction, therefore, we are clearly of the view that the term 'individual' in Sec. 3 includes a group of individuals like a Mapilla Tarwad."

10. Mr. Joshi also invited our attention to *AIR 1961 AP 75* (supra). In para 25 of the said decision it has been observed as under :

"(25) From the authorities cited above it is clear that the expression "individual" used in Sec. 3 of the Indian Income-Tax Act has been construed to mean and include not only individuals as such, but an association or body of individuals. The principle of those decisions can be applied to the construction of the expression "individuals" in Entry 86 of List I to the Seventh Schedule of the Constitution. In that view, it cannot be said that an association or body of individuals such as Hindu Undivided Family does not fall within the scope and meaning of the expression "individuals" used in the Entry."

In this very decision in para 20 observations made in *AIR 1957 SC 832* (supra) quoted hereinabove have been relied upon. In *AIR 1960 Bombay 191* (supra) cited by Mr. Joshi it has been observed in para 16 that "the pivotal point of the argument was that the expression 'individuals' cannot include a Joint Hindu Family because a Joint Hindu Family is not in the eye of law a group of individuals. It was urged that a Hindu coparcenary is a sort of a corporation and coparcenary property belongs to a unit having corporate existence and not to the individual coparceners or members of the joint family." Having posed the question, it has been held and concluded

in para 32 that the conclusion was, therefore, inescapable that the property of a Hindu Undivided Family is within the ambit of Entry 86 and it is the property of the individuals who are members or coparceners of the joint family. It has been further held that, "it must follow, therefore, that it was within the competence of the Union Legislature to impose wealth tax on the Hindu Undivided Family as a unit of taxation and that the impugned legislation in Sec. 3 of the Wealth Tax Act, 1957, affecting a Hindu Undivided Family cannot be struck down on the score of vires. In *AIR 1940 Madras 612* (supra) it was held by the Full Bench of Madras High Court that a co-operative society registered under the Indian Co-operative Societies Act was an "individual" within the meaning of the Indian Income-Tax Act and the Bombay High Court in *AIR 1960 Bombay 191*(supra) has taken the view that there is not only no settled legislative practice as to the meaning of the expression "individual" in taxing statutes, but there is not even unanimity of judicial opinion as to the meaning of that expression in the Indian Income-tax Act and the Court was unable to hold that the expression "individuals" used in defining the topic of legislation in the Constitution does not include an association of individuals such as a Hindu Undivided Family. In *AIR (33) 1946 Nagpur 16* (supra) it was held while considering a case under Co-operative Societies Act that there was nothing in the Co-operative Societies Act to prevent a joint H.U.F. from becoming a Member of the Bank. Thus, the difference of the judicial opinion on this issue now is settled and as per the decision of the Apex Court in *AIR 1981 SC 1269* (supra) read with *AIR 1957 SC 832* there is no scope for doubt that the H.U.F. may be considered as a single unit and thus there is nothing in the Act under consideration which prevents a H.U.F. from becoming a member of the Co-operative Society and accordingly second contention raised by Mr. Zaveri also fails.

11. We examine the case of the petitioner-Society on the basis of tenant-owner Society and that the respondent No. 2 had no ownership right over the plot in question so as to transfer the same to the respondent No. 1. The respondent No. 2 being the member of the petitioner-Society was of course bound by the bye-laws of the petitioner-Society and had to follow them. So far as the right to transfer is concerned, it will depend upon the adjudication of the rights of the respondent No. 2 in respect of the transfer of a plot allotted to him by a tenant-owner Society like the petitioner and will depend upon the finding on the question raised regarding the validity of Rule 12(2) of the Rules with reference to petitioner-Society's right under Art. 19(1)(c) of the Constitution of India and, therefore, we proceed to examine the contentions Nos. 3 and 4 together.

12. Rule 12(2) of the Rules is reproduced as under :

"12(2). No co-operative housing society shall without sufficient cause, refuse admission to its membership to any person duly qualified therefor under the provisions of the Act. And its bye-laws to whom an existing member of such society wants to sell or transfer his plot of land or house and no such society shall without sufficient cause, refuse to give permission to any existing member thereof to sell or transfer his plot of land or house to another person who is duly qualified as aforesaid to become its member."

The challenge to this Rule is based on the Division Bench decision of this Court in *Amreli Dist. Co-operative Sale and Purchase Union 1984 (2) GLR 1244*.

However, we have considered the import of this decision while appreciating the contention No. 1 with regard to the petitioner-Society's absolute right to deny or refuse membership; its validity has to be examined on the anvil and scope of the right claimed by the petitioner-Society under Art. 19(1)(c) of the Constitution of India. There is no room for doubt that the said Article gives the right to form association and no fetters can be imposed on such a right. The contention of Mr. Zaveri is that any check on the Society's right on the question of admitting, denying or refusing membership will be violative of the right to form Association and according to him, his contention is fully covered by the decision of the Gujarat High Court in *Amreli District Co-operative Sale and Purchase Union Ltd.'s case* (supra) and he strenuously argued that when Secs. 22(2) and 24 of the Act has been struck down by the Division Bench, Rule 12(2) of the Rules also should be struck down. He submitted that it depends upon the sweet will of the Society to admit or deny or refuse membership to any person without assigning any reason and even if no reason is given, such a decision is beyond challenge. We have already rejected this contention of Mr. Zaveri in the earlier part of this judgment while considering first contention. So far as right to form association is concerned, in the facts of this case, we find that the right to form association has already been accomplished and the same is not in question in this petition. The point for consideration is as to whether any association, which has been formed and registered under the Act, is supposed to act in accordance with the provisions of the Act and the Rules framed thereunder or not and as to whether the terms in which Rule 12(2) is couched put any fetter on the rights of the petitioner-Society and whether it does not make out a case of reasonable classification so as to sustain the validity of Rule 12(2). Mr. Joshi argued that Rule 12(2) of the Rules is not *pari materia* with the language of Sec. 22(2) and Sec. 24 of the Act and that the provisions of Rule 12(2) seek to balance the right guaranteed under Art. 19(1)(c) with that of the right under Art. 300A of the Constitution of India. According to Mr. Joshi provisions of Rule 12(2) are regulatory in nature over the competence of a Society. He has placed reliance on a decision of the Constitutional Bench reported in *AIR 1985 SC 973* wherein *AIR 1971 SC 966* (supra) cited by Mr. Zaveri has been considered and distinguished. In *AIR 1985 SC 973 (Daman Singh v. State of Punjab)* while referring to *Damyanti's case*, i.e., *AIR 1971 SC 966* the Supreme Court has observed that in *Damyanti's case* an unregistered society was by statute converted into a registered society, which bore no resemblance whatever to the original society and new members could be admitted in large numbers so as to reduce the original members to an insignificant minority and the composition of the society itself was transformed by the Act and the voluntary nature of the association of the members who formed the original society was totally destroyed and for this reason the Act was struck down by the Court as contravening the fundamental right guaranteed under Art. 19(1)(f). According to the Apex Court the co-operative societies which are from the inception governed by statute are to be considered on a different footing. According to the decision in *Daman Singh's case (AIR 1985 SC 973)* the Supreme Court has held as under :

“In the cases before us, we are concerned with co-operative societies which from the inception are governed by statute. They are created by statute, they are controlled by statute and so, there can be no objection to statutory interference with their

composition on the ground of contravention of the individual right of freedom of association.”

Thus, we are fortified in our view on the strength of the decision of the Supreme Court in *Daman Singh's case* (supra) particularly having regard to the observations made in para 9 thereof that so far as the composition of the co-operative society is concerned, there cannot be any objection to statutory interference. The composition of the co-operative society certainly covers the issue with regard to the membership and the right of the society to admit, refuse or deny such membership and such decision is also amenable to statutory interference as has been held by the Supreme Court. We, therefore, agree with the contention of Mr. Joshi that the provisions of Rule 12(2) of the Rules regulate the composition of the Society. Language of Rule 12(2) also makes the transfer of the plot permissible and provides that no co-operative society shall without sufficient cause refuse membership to any person duly qualified under the Act, Rules and the bye-laws and if the existing member of the petitioner-Society wants to sell or transfer his plot of land or house to another person, who is duly qualified, the society in absence of sufficient cause cannot refuse permission to any existing member to sell or transfer his plot of land to another person, who is duly qualified to become its member. This Rule, therefore, clearly postulates the transfer of the plot of land by the existing member in favour of another person, who intends to be and is qualified to become a member. He may acquire membership after completion of the transaction but there is no bar to the transfer of the plot in his favour in case he desires to be a member subject to the condition that he is qualified to be a member of the society. To be more specific, we may observe that the provisions contained in Rule 12(2) of the Rules are in conformity with the rights of the members of the petitioner-society with regard to the transfer of the plot under Article 300A of the Constitution of India and there is nothing in Rule 12(2) which may seek to impinge upon the society's rights under Art. 19(1)(c) of the Constitution of India and to this limited extent the decision of the Division Bench in *Amreli Dist. Co-op. Sale and Purchase Union's case* (supra) stands diluted by what has been held by the Supreme Court in *Daman Singh's case* (AIR 1985 SC 973), particularly in the end of para 9 thereof after considering the decision reported in AIR 1971 SC 966. In view of this decision of the Constitution Bench of the Supreme Court there is no basis to hold Rule 12(2) of the Rules to be *ultra vires* of Art. 19(1)(c) of the Constitution of India and while upholding the right of the respondent No. 2 to transfer the plot in question subject to the bye-laws of the petitioner-Society we hold that Rule 12(2) of the Rules is *intra vires* of Article 19(1)(c) of the Constitution of India and thus contentions Nos. 3 and 4 are decided accordingly against the petitioner.

13. On the question of the membership of respondent No. 1, it is also submitted by Mr. Zaveri that the respondent No. 1 has not made any proper application in the prescribed form according to bye-laws and he invited our attention to Form of Transfer and submitted that neither respondent No. 1 could be admitted to the membership nor respondent No. 2 could transfer the plot in question to respondent No. 1 without fulfilling the requirements of bye-laws. Form of Transfer is reproduced as under :

FORM OF TRANSFER

This instrument made the _____ day of _____ 19
between A of _____ and B of _____ the witnesses that in
consideration of the sum of Rs. _____ paid by the said B to me, I, the said
A, hereby transfer to the said B, his executors administrators and assigns the
_____ shares _____ numbered, now standing in my name in the books of the
above named Society to hold the said shares upon the same conditions on which
I now hold the same; and that I, the said B, hereby accept the said shares, subject
to the said conditions. In witness whereof we have hereunto set our hands.

(Name of Transferor)

(Name of Transferee)"

Principally there cannot be any dispute to the proposition that members of any co-operative society have to conform to the bye-laws and any person desirous of becoming a member of co-operative society shall follow the bye-laws and, therefore, while we agree principally with Mr. Zaveri on this question, we find from the perusal of the documents, which have been annexed with the petition as Annexures 2 and 3, that all necessary information which were required for the purpose of membership and for the purpose of transfer of plot in question had been disclosed and made available to the petitioner-Society, which are required by the bye-laws and, therefore, requirements of bye-laws of the petitioner-Society had been substantially complied with. Mr. Joshi appearing for the respondent No. 1 also submitted that the bye-laws of the co-operative society do not have the force of law as has been held by the Supreme Court in *AIR 1970 SC 245*, para 10 thereof, wherein it has been observed as under :

“We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute.”

This decision of the Supreme Court in *AIR 1970 SC 245* was also followed in a subsequent decision reported in *AIR 1984 SC 192* wherein the question of providing reservation of seats to the members of Scheduled Castes or Scheduled Tribes in the co-operative society was considered in detail by the Supreme Court. In para 15 of the judgment the Apex Court has observed that, “Bye-laws of a co-operative society can at best have the status of an Article of Association of a company governed by the Companies Act, 1956 and as held by this Court in *Co-operative Central Bank Ltd. v. Addl. Industrial Tribunal, Andhra Pradesh*, 1970 (1) SCR 205 : (AIR 1970 SC 245) the bye-laws of a co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law.” In the case under consideration before the Supreme Court in

B. K. Garad's case (AIR 1984 SC 192) the question was with reference to Sec. 73-B of the Maharashtra Co-operative Societies Act and it was held that this provision was introduced to ensure representation of such persons who in the absence of reservation may find it difficult to be elected to the committee in which the entire power of management vests. It was further held that absence of representation coupled with subjection to the dictates of the society would be antithesis of democratic process reducing such persons to serfdom. It was further held that this democratic process must permeate in filling in reserved seats otherwise the committee would not enjoy a representative character. Reference has been made to Part XVI of the Constitution and especially Arts. 330 and 332, which provide for reservation of the seats in the House of People and in the Legislative Assembly of every State for the Scheduled Castes and the Scheduled Tribes. The Supreme Court has further held that to make the democratic institutions fully representative, reservation of seats has to be made for those who on account of their backwardness, exploitation and unjust treatment both social and economic cannot obtain representation because of the class domination. The Supreme Court has also made reference to Heydon's test more often noticed that in order to arrive at true intendment of a statute, the Court should pose to itself the questions: (1) what was the situation prior to the provision under construction, (2) what mischief or defect was noticed before introducing the provision, (3) whether it was remedial and (4) the reason for the remedy; and it has been held that reservation was made in the absence of which those in whose favour reservation was made could not get elected to the decision making bodies and while ascertaining the true canon of construction applicable to Sec. 73-B, these aspects must stare into the face. In para 11 it has been observed as under :

“Therefore, the language and the chronology of the methodology of filling in reserved seats employed in Sec. 73-B provide a clue to its correct construction and there should be no doubt that opportunity must be provided for filling in seats by election. It is the failure of the election machinery to fill in the seats which would enable the concerned authority to fill in the seats by appointment or co-option. The condition precedent to filling in reserved seats by appointment or co-option is holding of the election and failure to elect such persons would permit resort to other methods of filling in the reserved seats.”

It would be thus found that so far as memberships of the co-operative Society are concerned, the approach which has been pointed out by the Supreme Court is on an entirely different dimension in comparison to other private societies. Therefore, on the question of membership, the co-operative society cannot be given an absolute free hand as it should be antithesis to the basic tenets of the movement. It is transparently clear from the documents placed on record with the petition to which reference has been made hereinabove that necessary particulars were available before the petitioner-Society and respondents Nos. 1 and 2 had substantially complied with the requirements of the bye-laws. Mr. Joshi has argued that in AIR 1955 SC 425 (*Sangram Singh v. Election Tribunal, Kotah*), para 16 thereof at page 429, the Supreme Court has held that one has to look at the substance of the matter and not to the form. Therefore, it cannot be said that the respondent No. 1 could not be admitted to the membership and the respondent No. 2 had no right to transfer the plot and, therefore, 5th contention of Mr. Zaveri also fails.

14. It will be pertinent to point out that in *AIR 1975 SC 1470* the question of right to occupancy has been considered in the context of granting membership and the right to transfer to the member of the co-operative society. After considering the scheme of the Act and the bye-laws, the Supreme Court has observed that the member may not transfer his interest in the property prior to one year and and transfer is made to an existing member of the Society or to a person whose application for membership has been accepted by the Society and in the case at hand there is nothing to show contravention of bye-laws and according to the Supreme Court there is no reason to think that there is any question of refusal of membership of the Society to a non-member if he is qualified otherwise and makes an appropriate application in which case the transfer of shares will be operative and thus the assignment of the right to occupation will hold good. The Supreme Court further held that this species of property, namely, the right to occupy, assumed significant importance and acquires under the law a stamp of transferability in furtherance of the interest of commerce and there is no fetter under any of the legal provisions against granting membership. The right to occupation has been held to be a property both attachable and saleable and a specific non-inclusion of a particular species of property under the Schemes of the Act was not of any consequence if it is saleable otherwise.

15. The right of any Society or Association not to associate is a concomitant right and the Society, in the facts of this case, having already been formed, there is no question of considering it a case of breach of the rights under Article 19(1)(c) of the Constitution of India and the right in the nature of a concomitant right cannot be assumed in favour of the Society. Thus, the contention raised on behalf of the petitioners in this regard also fails.

16. The grievance with regard to non-payment of 50% of the premium is of no consequence now as it has already been taken care of by the authors of the impugned orders and they have held that the petitioner-Society will be paid 50% of the premium and, therefore, the impugned orders are not vulnerable or assailable. We have gone through the impugned orders passed by the District Registrar and the Joint Registrar and we find that they do not suffer from any legal error, which may warrant any interference by this Court. Accordingly, we do not find any merit in contentions Nos. 6 and 7 and the same are rejected.

17. All the contentions raised on behalf of the petitioners by Mr. Zaveri, therefore fail. We do not find any merit in this Special Civil Application so as to warrant any interference under Art. 226 read with Art. 227 of the Constitution of India and accordingly this Special Civil Application is dismissed. Rule is discharged. Interim order dated 19-11-1981, which was continued thereafter by further orders, shall continue further for a period of eight weeks only as prayed by the learned Counsel for the petitioners. We leave the parties to bear their own costs.

(JBS)

Petition dismissed.

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