LETTERS PATENT APPEAL.

Before Rankin C. J. and C. C Ghose J.

RAMENDRANATH MUKHERJI

v.

BÂLURGHÂT CENTRAL CO-OPERATIVE BANK, LTD.*

1932

Jan. 27 ; *Feb.* 1.

Co-operative Society—Right to buy shares—Compulsory purchase, if possible—Disputes—Jurisdiction of civil courts—Co-operative Societies Act (II of 1912), s. 43(1)—Rules of Bengal Government, r. 22.

The Bàlurghàt Central Co-operative Bank is a society registered under the Co-operative Societies Act.

At a special general meeting convened for the purpose the society passed a resolution, the effect of which was that all preference shares were compulsorily taken from their holders, at par value and vested in the society. The society also purported to change itself into a " pure type " society at the same meeting, and proceeded to elect new directors.

The plaintiff, a preference share-holder, sued the society for a declaration that the resolution passed at the special general meeting was *ultra vires* and illegal and for an injunction to restrain the society from acting on it.

Held that the bye-laws did not authorise compulsory expropriation of any member's holding by the society, but only made it lawful for the society to purchase its own shares, at a fixed price, *viz.*, at par value.

Held, also, that a question whether the plaintiff is or is not a share holder, or whether the new constitution of the society is valid or invalid, or whether the society is, in effect, of the " mixed " or " pure " type is not a mere dispute between members or between a member and an officer, touching the business of the society within the meaning of rule 22 of the rules framed by the Government of Bengal in 1920, under clause (*1*) of section 43 of the Co-operative Societies Act. Civil courts have jurisdiction to try the same.

Heard v. *Pickthorne* (1), *McEllistrim* v. *Ballymacelligott Co-operative Agricultural and Dairy Society* (2) and *In re Quinn and National Catholic Benefit and Thrift Society's Arbitration* (3) relied on.

LETTERS PATENT APPEAL by the plaintiff.

The facts appear sufficiently from the judgment.

Atulchandra Gupta (with him *Bijalibhooshan Sanyal*) for the appellant. The bye-laws do not confer any power of compulsory purchase by the society.

*Letters Patent Appeal, No. 22 of 1931, in Appeal from Appellate Decree No. 1806 of 1929.

(1) [1913] 3 K. B. 299. (2) [1919] A. C. 548.
(3) [1921] 2 Ch. 318.

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Rule 22 of the rules framed by the Government of Bengal, under section 43 (*1*) of the Act, only provides for arbitration in case of disputes "touching the "business of the society." It is not exactly similar to section 68 of Friendly Societies Act, as amended in 1896. (59 & 60 Vict. c. 25)

[RANKIN C. J. Does this case not come within the meaning of disputes between members?]

No. It is a dispute between a member and the society. Further it is not a dispute "touching the "business" of the society. Therefore, jurisdiction of the civil court is not ousted. See section 49 of Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39) and *McEllistrim* v. *Ballymacelligott Co-operative Agricultural and Dairy Society* (1) and *Heard* v. *Pickthorne* (2).

Blythe v. *Birtley* (3) is no longer law.

"Touching the business of the society" means matters of internal administration.

A statute which ousts the jurisdiction of the court should be strictly construed.

Girijaprasanna Sanyal (with him *Soureendranarayan Ghosh*) for the respondent society. Business means anything that the society does or is entitled to do, for the fulfilment of its object, within the Act and its bye-laws. Therefore, this resolution, being under the bye-laws, is touching the business of the society.

Heard v. *Pickthorne* (2) shows clearly that, although the matter was referred to as a resolution, it is in effect an amendment of the rules. Clause 93 of the bye-laws provides for amendment of the bye-laws. And if it is a resolution passed under the existing bye-laws it comes within the purview of clauses (*6*) and (*23*). *Blythe* v. *Birtley* (3) is still good law and that governs this case.

(1) [1919] A. C. 548, 591. (2) [1913] 3 K. B. 299, 307, 312.
(3) [1910] 1 Ch. 228.

The dispute is between members of the society and is governed by rule 22 of the rules framed under section 43 (*1*). *Mafizuddin Ahammad* v. *Narayanganj Central Co-operative Sale and Supply Society, Ltd.* (1), *Zamindara Bank, Sherpur Kalan v. Suba* (2), *Gopinath* v. *Ramnath* (3).

Rule 22 is really wider than section 68 of the Friendly Societies Act. This is really a dispute between a member and the secretary, acting on behalf of the society.

Clause 23 of the bye-laws gives power for compulsory purchase. It is not an enabling clause, it vests a discretionary power.

Gupta, in reply. Clause 23 only makes purchase by the bank of its own shares legal, for otherwise it would be illegal. Power of compulsory purchase would mean taking one person's money for the benefit of others and no statute should be construed in that manner, unless there is express provision for such action. *Attorney General* v. *De Keyser's Royal Hotel* (4).

The resolution really changes the constitution of the bank and it is not a mere matter of amendment of any bye-law. The fact that the registrar has sanctioned it cannot make an act, otherwise *ultra vires*, valid.

Cur. adv. vult.

RANKIN C. J. This Letters Patent Appeal is brought by plaintiff No. 2 from the decision of Patterson J., who on Second Appeal, dismissed the suit, but granted leave to appeal. The trial court had dismissed the suit, but the learned Additional District Judge had decreed it. The plaintiffs sued the Bâlurghat Central Co-operative Bank, a society registered under the Co-operative Societies Act (II of 1912), for a declaration that a certain resolution,

(1) (1931) 36 C. W. N. 121.
(2) (1922) 71 Ind. Cas. 722.
(3) (1924) I. L. R. 47 All. 374, 376.
(4) [1920] A. C. 508.

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passed on the 20th June, 1925, at a special general meeting of the society was *ultra vires* and illegal and for an injunction to restrain the society from acting on it. The appellant was the holder of ten preference shares of Rs. 20 each and the effect of the resolution complained of, which was worded in an obscure and unbusinesslike way, was that all preference shares were compulsorily taken from these holders at par value and vested in the society. This the society claimed to do by virtue of its regulations.

The object of the society was to finance co-operative societies in the subdivision of Bâlurghât, and, while the ordinary shares could be held by such societies only, the preference shares could be held only by individuals belonging to the sub-division. The two bye-laws upon which the society proceeded are as follows :—

(6) The nominal capital of the bank shall be Rupees one lakh, which shall be divided into 5,000 shares, of the value of Rs. 20 each, half of which at first shall be preference shares and the other half ordinary shares. The capital of the bank may be increased or the proportion of the preference shares to ordinary shares may be varied by a resolution of a general meeting specialty convened for the purpose of considering the question and at which at least three-fourths of the members shall be present in person or by proxy. Capital may be raised (i) by the issue of shares, (ii) by deposits from members or non-members subject to the rules and (iii) by borrowing.

(23) The bank may, subject to the consent of the registrar, buy out at par preference shares from preference share-holders and re-issue them as ordinary shares.

The general meeting may, by a majority, prescribe the procedure to be adopted in selecting the preference shares which are to be thus bought out in any one year, and the number of preference shares which are to be thus elected in any one year.

It seems to be clear enough that the 6th bye-law would not of itself authorise the compulsory expropriation of any member's holding and the merits of the plaintiff's grievance depend upon bye-law 23. In my judgment, that bye-law cannot be held to give compulsory powers to the society. The word "buy" and the phrase "buy out" connote agreement rather than compulsion and, although the transaction contemplated is to be at a fixed price, *viz.*, at par, this in itself is insufficient to make the first clause mean more than that it shall be lawful for the society to make a purchase. The second clause requires that the

number of shares to be bought in any year shall be decided by a majority at a general meeting. This takes us no further. It also says that the general meeting may prescribe the procedure to be adopted in selecting the preference shares, which are to be thus bought out. As the number of preference shares, held by persons willing to sell at par, might in any year exceed the number which the society was desirous of buying, I do not think that the element of compulsion can be discerned in this provision.

Accordingly, I am of opinion that the society was not entitled to treat the plaintiff as being no longer a member after the 20th June, 1925.

The only other question is whether, in these circumstances, the plaintiff's right to have recourse to the ordinary courts of law is taken from him by clause (*1*) of section 43 of the Act and the rules made thereunder for this province. Rule 22 of the rules made under the Act on the 8th November, 1920, by the Governor-in-Council is as follows :—

22. Disputes—(1) Any dispute touching the business of a registered society between members or past members of the society, or persons claiming through a member or past member, or between a member or past member or persons so claiming and the committee or any officer, shall be referred in writing to the registrar.

The society, on the 20th June, 1925, not only purported to acquire all the preference shares, but proceeded to so modify its regulations as to make itself a "pure type society", that is to say, to adopt a new constitution on the footing that it had no preference share-holders, and no members, other than the registered societies who held ordinary shares. Let us omit all question whether these resolutions were carried by the necessary majority, whether due notice had been given to the members, whether the resolutions were in proper form. Let us omit the fact that the constitution was changed before the preference share-holders had executed any transfer or received any money for these shares. Is the plaintiff's cause of action withdrawn from the courts by rule 22? In my opinion, it is clearly outside that rule. The plaintiff is

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still a preference share-holder and as such he claims that the new constitution, which knows only ordinary shares and only registered societies as members is fundamentally illegal and *ultra vires*. That such a question does not come under the rule at all is fully substantiated by the decisions under English Acts, such as the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), section 49, the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), section 68, the National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), section 67. The decision in *Heard* v. *Pickthorne* (1) was approved in the House of Lords in *McEllistrim* v. *Ballymacelligott Co-operative Agricultural and Dairy Society* (2). It was applied by Eve J. in *Quinn's* case (3). The terms of the Indian Act and of the Bengal Rule thereunder are certainly somewhat different from the enactments considered in these cases, but I cannot regard a question whether the plaintiff is or is not a shareholder, whether the society's new constitution is valid or invalid, whether it is, in effect, of the "mixed" or "pure" type, as a mere dispute between members or between a member and an officer "touching the "business of the society." In my judgment, this appeal should be allowed with costs before us and before the learned Judge. The decree of the lower appellate court should be restored. The terms of the injunction will be "that the defendant bank be "restrained from acting upon the resolution of 20th "June, 1925, hereinbefore declared to be *ultra vires*."

GHOSE J. I agree.

Appeal allowed.

S. M.

(1) [1913] 3 K. B. 299. (2) [1919] A. C. 548.
(3) [1921] 2 Ch. 318.