GROUP HOUSING SOCIETIES

STAND EXEMPT FROM LABOUR LAWS

by H.L. Kumar, Editor : Labour Law Reporter

It may sound strange but it is a fact that the Group Housing Societies are free from the rigours of the labour laws as they are not applicable to them. Although labour is a significant cost for all entities in business since the housing societies are not business entities therefore, they are exempted from fulfilling the obligations of labour laws. This is the reason that employing labours in housing societies has become a very onerous duty for the office bearers, who work there in an honorary capacity. This is also one of the reasons that most of the office-bearers do commit such mistakes that can be easily avoided by getting professional advice. As per the Industrial Disputes Act, the employment of the labour imposes many obligations on the employer pertaining to the working conditions, retrenchment process and payment of retirement benefits. Nevertheless, in this case, Article 14 of the Constitution of India appears to be violated because the workers working in housing societies are treated differently from others.

Co-operative Group Housing Societies have become preferred residential places these days, particularly in big and medium-sized cities. These societies provide good community lifestyle. A cooperative housing society is a set-up formed through mutual cooperation and consent of a number of members. The members have an understanding and a sense of community spirit and camaraderie which most of the living in independent houses miss. Besides gated security, the essential support services like electricians, plumbers, carpenters, masons, painters and sweepers etc. are available on a call and the charges for these services are within the monthly payment for maintenance of the apartment.

The residents in such societies also comprise cross-sections of the societies like practising Lawyers, Companies Executives, HR Professionals among others. They are often asked by the office-bearers of such housing societies as to whether the labour laws are applicable to them or not as in the case of shops, establishments, educational institutions, hospitals or factories etc. The scope of applicability of labour laws is very wide, more so, when non-profit making establishments are covered by the Industrial Disputes Act but the Housing Societies are exempt from the obligations of labour laws. Due to the expansion of the Industrial Disputes Act benefits/privileges like coverage under ESI Act, Employees Provident Funds & MP Act, Minimum Wages Act, Contract Labour (R&A) Act, and Payment of Bonus Act provide the umbrella cover to almost all employees. Labour laws are not restricted to only providing for job security and conditions of service as ensured under the Industrial Disputes Act, 1947.

It is immaterial whether one is conversant with labour laws are not but most of the residents are often confronted with such queries about the status of the Housing societies. Hence an attempt has been made here to clarify the applicability of important labour laws upon the employees of such cooperative housing societies.

INDUSTRIAL DISPUTES ACT, 1947

In ***Dhanalakshmi vs. Reserve Bank of India***, 1999 LLR 278 the Karnataka High Court has held that the Industrial Disputes Act, 1947 is admittedly a social welfare legislation enacted for the purpose of

industrial peace by protecting the interests of the workmen who were found subjected to exploitation by the employers. The object of the Industrial Disputes Act, 1947 is to make provision for the investigation and settlement of industrial disputes and for certain other purposes. The machinery of the Industrial Disputes Act, 1947 has been devised with the object of preventing industrial strike, maintaining industrial peace and achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The object of the Industrial Disputes Act, 1947 is to protect the workmen against victimization by the employer and to ensure termination of proceedings in connection with the industrial disputes in a peaceful manner.

The full bench of the Supreme Court in ***Bangalore Water Supply and Sewerage Board vs. A. Rajappa***, 1978 (36) FLR 266 has held that whether an activity would fall within the purview of the definition of the industry will be as follows:-

> "...(i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes..."

The above judgment was considered in the case of ***Som Vihar Apartment Owners Housing Maintenance Ltd. vs. Workmen,*** 2001 LLR 599, where it was held that when personal services are rendered to members of a society which is constituted only for the purposes of those members, the activity would not be treated as an industry nor the employees would be treated as workmen. This judgment was subsequently followed in the case of ***M.D. Manjur & Ors. vs. Shyam Kunj Occupants' Society & Ors.***, AIR 2005 SC 1501 and it was reiterated that the housing co-operative society is not an industry and its employees cannot be treated to be "workmen" as defined under section 2(s) of the Industrial Disputes Act, 1947.

Gated communities have been vogue by home buyers for their esoteric profile and life style choices. Such projects by group cooperative societies offer an array of amenities like round the clock security reserved parking, outdoor pool, massage room with sauna, squash court, badminton court, indoor game room, gymnasium, pool side cafeteria, utility stores, multipurpose hall. Such facilities are available at most economically.

Reference is made to a recent case in ***Arun Vihar Residents Welfare Association vs. State of UP and other,*** 2020 (164) FLR 29 wherein it has been held by Allahabad High Court that the existence of jurisdictional fact as a *sine qua non* for assumption of jurisdiction by a Court or Tribunal. The existence of the jurisdictional fact has thus been held to be the *sine qua non* or the condition precedent before the Court assumes jurisdiction to decide the *lis* on merits. In this judgment, it has been observed by the High Court that the jurisdictional essence is the presence of an industrial dispute. The petitioner being not an "industry" and its employees were not "workmen" within the meaning of the terms as defined under the Industrial Disputes Act, 1947, there could not be said to have arisen any "industrial dispute" and therefore the award of the Labour Court suffers from a fundamental error of jurisdiction and is thus legally unsustainable.

In ***Arihant Siddhi Co.op. Housing Society Ltd. vs. Pushpa Vishnu More and Others,*** 2020 (164) FLR 304 while relying upon the judgment 'Bangalore Water Supply' (supra) holding that where multiple activities are carried on by an establishment, what is to be considered is the dominant function, the Bombay High Court has held that merely because the society charged some extra charges from a few of its members for display of neon signs, the society cannot be treated as an industry under section 2(j) of the Industrial Disputes Act, 1947, for carrying on business of hiring out of neon signs or allowing display of advertisements and set aside the award passed by the Labour Court holding the Society as an 'industry'.

Contract Labour (R&A) Act

In ***Smt. Rachana Gopinath & Another vs. The State of Karnataka***, 2016 LLR 864 the Karnataka High Court has held that Contract Labour (Regulation and Abolition) Act, 1970 is applicable to only that establishment, which is engaging 20 or more employees. As such Apartment Owners' Association or Society is not an establishment under section 2(e) of the Contract Labour (Regulation and Abolition) Act, 1970 as it is neither an office, department of the Government, a local authority nor any activity of an industry, trade, business, manufacture or occupation is carried on in any place of the Association, to attract the applicability of the Act. When the Apartment Owners' Association or Society is neither an establishment nor an 'industry' under the Industrial Disputes Act, persons employed by it cannot be characterised as workmen under the Act. Hence non-registration and non-maintenance of records under section 7, Rule 17(1) read with section 29 of Contract Labour (Regulation and Abolition) Act, 1970, is not its violation since Association is not an establishment to be covered under the Act. The building of a cooperative housing society does not make a commercial establishment to carry on any business or any commercial activities. Such a society is a collective effort of the members, who have organised themselves to maintain the society and to carry on its affairs in accordance with the bye-laws, rules and the Act. It is a distinct legal entity from its members. It collects the maintenance charges, service charges, and property and water charges payable to the municipal corporation. It acts as a statutory agent to collectively represent the members. It looks after the maintenance of the building and renders services such as collecting the prescribed charges from the individual members and disburses or spends them in accordance with law for repairs, water charges, property taxes, payment of wages etc. and keeps proper accounts and gets the accounts approved annually in its general meeting. There is no evidence or material to conclude or to infer what other activities are engaged in by society.

Housing Societies Employ Workers Mostly Through Contractors

Although, many disputes have arisen with regard to the equal treatment to those working in the group housing societies yet courts have not come to rescue of such workers as they do not fall within the meaning of the workman as provided in the ID Act. Moreover, in order to be avoided to be caught on the wrong side of the law the housing societies do not engage personnel and watchmen directly. They employ them through contractors in view of the growing use of technology the societies can concentrate on giving more conveniences and facilities to their residents.

EMPLOYEES' PROVIDENT FUNDS ACT & MP ACT, 1952

In ***Backbay Premises Co-operative Society Ltd. vs. Union of India***, 1997 (2) CLR 1075, it was held that the petitioner society consisting of various premises, which are used for business purpose by the members are required to collect maintenance charges and statutory charges from its members under the provisions of Co-operative Societies Act and Bye-laws. Such activity of the society would not amount to commercial or business activity. The petitioner society was hence not covered by the Act even under Section 1(3)(b) of the PF Act.

EMPLOYEES' STATE INSURANCE ACT

In ***Regional Director, Employees' State Insurance Corporation vs. Tulsiani Chambers Premises Co-operative Society***, 2008 (116) FLR 656 wherein while considering the applicability of the Employees' State Insurance Act, 1948 to a co-operative housing society it was held that the society could not be said to be covered within the meaning of the word "shop" so as to bring it within the ambit of the E.S.I. Act, 1948. The status of a housing co-operative society under various statutory enactments were considered and it was held that the society could not be said to be carrying out commercial or trading activities.

MINIMUM WAGES ACT

In one case, the Bombay High Court was required to consider whether a co-operative society owning industrial units or galas wherein members or shareholders are carrying on commercial or trading activities in the said units would make the society amenable to Minimum Wages Act, 1948 as far as employees of the Societies are concerned. This was considered in the case of ***Kiran Industrial Premises Co-operative Society Ltd. vs. Janata Kamgar Union,*** 2001 (89) FLR 707 (Bom.), it has been held that a society, in which its members carry on commercial and trading activities, cannot be treated or said to be engaged in any commercial venture or business, trade or profession and does not even amount to "commercial establishment" much less a "shop". The Hon'ble Judge concluded as under :

> Let us now analyse the legal provisions. The claim of the employees for minimum wages is under the Minimum Wages Act. Item 17 of Part I of the Schedule reads as under:
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> 17. Employment in any shops or commercial establishment (not being an employment in any bank or employment which is excluded) under any of the other entries in this Schedule.
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> Explanation - For the purpose of this entry, the expressions, "Shop" and "Commercial Establishment" shall have the meaning respectively assigned to them in the Bombay Shops and Establishments Act, 1948.

SECURITY GUARDS ACT

In ***Maharashtra Rajya Suraksha Rakshak and Gen. Kamgar Union vs. Security Guards Board for Greater Bombay and Thane District***, 2007 (113) FLR 515 (Bom HC), it has been held that a Co-operative Housing Society having residential and commercial tenements is not an establishment if it is not carrying on business, trade or profession even though some of its members are carrying on business, trade or profession in their premises. Relevant test is whether the society is carrying on business, trade or profession. Mere rendering of service by Society to its members, cannot be said to be either business or trade or commercial activity.

SHOPS & ESTABLISHMENTS ACT

In ***Smt. Rachana Gopinath & Another vs. The State of Karnataka***, 2016 LLR 864 the Karnataka High Court has held that the Apartment Owners Association is an Association created for the benefit of the Members of the Association and the so-called workmen employed by the Association are rendering only personal services to the Members of the Association. As aforesaid, to attract the provisions of the Act, the essential ingredients of an 'establishment' as set out in Section 2(e) of the Act which contemplates that the activities must be commercial in nature, carried on by the office or department of the Government or the Local Authority must be satisfied. In the absence of such satisfaction, respondent insisting for compliance of the procedures prescribed under the Act is wholly unsustainable. Therefore, the registration obtained by the petitioners on a wrong conception under the Karnataka Shops and Commercial Establishments Act, 1961 and further not renewed would not entitle the respondent to harass the petitioners' Association by filing a criminal complaint on some flimsy grounds before the Magistrate.

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