

## Societies Registration Act,1860.

Section 6 of the Societies Registration Act 1860, states that “Every Society registered under this Act may sue or be sued in the name of the President, Chairman or principal secretary, or trustees, as shall be determined by the rules and regulations of the Society and in default of such determination, in the name of such person as shall be appointed by the Governing Body of the occasion:

*Provided that it shall be competent for any person having a claim or demand against the Society to sue the President*

- In case the rules and regulations do not provide for any person in whose name the society may sue or be sued, in that case the Governing Body may appoint a person for the same.
- Similarly any person may sue the society through its President, Chairman or the principal secretary, if upon an application to the Governing Body some other officer or person be not nominated to be the defendant.

## Suits By And Against Societies

*or Chairman, or principal secretary or the trustees thereof , if on application to the governing body some other officer or person be not nominated to be the defendant.”*

Section 6 lays down the procedure in which the society may sue or be sued.

- The society can be sued in name of the President, Chairman or the principal secretary of the Society which is given as per the rules and regulations of the society.

**Legal status of the Society:** In order to acquire a judicial status, a society has to be registered under the Societies Registration Act 1860. Thereafter it enjoys the status of a separate legal entity apart from its members constituting the same. After registration and acquiring a legal status it can enter into a valid contract which may be enforced by or against it. Similarly the legal status also makes the society capable of suing and be sued.

In the case of *Radhaswamy Satsang Sabha, Dayalbagh vs. Hans Kumar*

*Kishan Chand*, The Madhya Pradesh High Court held that “the law only requires registration under this Act, wherever obtaining and does not require registration in the state of Madhya Pradesh only before benefit of sub-clause could be claimed”. Therefore according to the judgment it can be said that to claim the benefit of the Societies Registration Act, 1860, the law requires that the Society should be registered under the Societies Registration Act 1860 and not specifically in the State in which the suit is being filed.

Also *Section 5* of the Act says that “*The property, movable or immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title*”. Thus it is clearly stated in *Section 5* that the property which belongs to a society whether movable or immovable, if it is not specifically vested in trustees shall be deemed to be vested in the governing body of the society. According to this, in all proceedings, whether criminal or civil, the property may be described as the property of the governing body of such society by their proper title.

In case of *Harinarayan Shaw Vs. Gobardhandas Shroff*, it was held that in case of a disputed property where the property of the society was vested in the trustees before registration becomes, as and from the date of the registration of

the Society, a property belonging to the society and be deemed to be the property of the Society.

After registration of a society, there is no change of ownership, it is only that the society just changes from an unregistered society to a registered society. By registration, an unregistered society acquires a status only to make it convenient for carrying out the purposes for which the unregistered society has been established. Certain acts which cannot be done as an unregistered society can be done by the society after registration.

If a society has adopted a shorter and convenient name along with its registered name, i.e. by a proper method given to itself or assumed a name for the purpose of suing or being sued, a suit in that name must be regarded as a suit by that legal entity, provided of course that it has been instituted by a person empowered to do so.

The members of a society enjoy a separate legal entity from the society and therefore a personal liability cannot be imposed on the members constituting the society. The principles which govern the relations of members of Companies which are incorporated under the Indian Companies Act, 1956 are also the principles which govern the Societies which are registered under the Societies Registration Act, 1860. (*A.S. Krishnan Vs. M. Sundaram*)

#### **These principles are**

- 1. A court will not interfere with the internal management of**

**the companies acting within their powers and will have no jurisdiction to do so.**

- 2. In order to redress a wrong done to a company or to recover money or damage alleged to be due to a company the action should prima-facie be brought by the company itself.**

Where there are no specific provisions in the Rules and Regulations of the Society as to who would represent the Society in the legal proceedings for and against the society, the second part of Section 6 authorizes the Governing Body to appoint a person who would represent the society. It is competent for the Governing Body, i.e. the managing Committee to delegate such power to office bearers, or trustees or any one of them.

**Section 7 of the Societies Registration Act, 1860 deals with: Suits not to abate** *“No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person, by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued but the same suit or proceeding shall be continued in the name of or against the successor of such person.”*

Therefore according to the section, on death or cessation of the office bearer of a society in whose name the suit or proceeding have been brought, will not result in discontinuation of such proceeding.

The person who has been further nominated by the Governing Body to take over the position of the person who has left the position either due to death or ceased to be the office bearer and henceforth will continue the proceedings. The person who takes over may either be the legal heir or representative or successor or person assigned by the Governing Body.

Section 8 of the Societies Registration Act 1860, deals with enforcement of judgment against a society. The Section 8 says that *“If a judgment shall be recorded against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the property of the society.”*

*The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society “*

This section specifically provides protection to the office bearers of a society stating that any judgment which has been passed against any person or officer of a society representing the society, such a judgment cannot be enforced against the personal property of such person or officer of the society. In various cases like *Board of Trustees, Unani Tibbia College Vs State of Delhi (Supreme Court)* and

various High Court cases like *Radha Soami Satsung Sabha Vs. Hans Kumar*, *A.S. Krishnan Vs. M. Sundaram*, a view has been taken that Sec 6 of the Act is an enabling provision and a registered society under the act can sue and be sued in its own name and is therefore a distinct legal entity from its members. Since a society is a distinct legal entity and the property of a society is not the personal property of a member or office bearer of a society, thus by virtue of this, the property does not vest in a member.

Similarly tax imposed on a society is not tax imposed on its members and is thus not a personal liability of its members.

Section 10 of the Societies Registration Act 1860 deals with the members liable to be sued as strangers. It says that, “*Any member who may be in arrear of a subscription which according to the rules of the society he is bound to pay, or who shall possess himself or detain any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society, may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of property in the manner hereinbefore provided.*”

***Recovery of successful defendant of costs adjudged.*** *But if the defendant shall be successful in any suit or proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the later case shall have process against the property of the society in the manner above described”*

A member may be sued by a society if his subscriptions are in arrear and if he has possessed or detained any property belonging to society against any rules or if he has injured or destroyed any property which belongs to such a society.

If such an action against any member so sued fails and he is adjudged to recover his costs, then that member may elect to recover such costs from the officer in whose name the proceedings were taken or from the society. In case of the society the member is entitled to have process against the property of the society.

*(To be continued...)*

***Pooja Bagga, FMSF***

