

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.677 OF 2015**

1 Maruti Shamrao Dhere	)	
Age 50 years, occ Agriculture	)	
R/o Vargane Tal Karveer,	)	
District Kolhapur	)	
2 Shri Baban Babalala Mullani	)	
Age 45 years Occ Agriculture	)	
R/o Vargane Tal Karveer	)	
District Kolhapur	)	..Petitioners

Vs.

1 Hanuman V.K.S(Vikas) Seva	)	
Sanstha Vargane, Tal Karveer	)	
Distrcit Kolhapur,	)	
through its Chairman	)	
2 Divisional Joint Registrar	)	
Co-operative Societies,	)	
Kolhapur Division, Kolhapur	)	..Respondents

Mr. S. S. Patwardhan i/b Mr. S. S. Tembekar for the Petitioners
Mr. A. B. Borkar for the Respondent No.1
Mr. S. D. Rayrikar AGP for the Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 28th July, 2015

ORAL JUDGMENT

1 Rule. With consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this court under Article 227 of the Constitution of India, is invoked against the order dated 31-12-2014 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division Kolhapur, by which order, the Appeal filed by the Respondent No.1 society, came to be allowed and resultantly the order dated 18-1-2014 passed by the Assistant Registrar, Co-operative Societies, Karveer, came to be set aside.

3 The dispute in the present Petition is as regards the membership of 135 persons of the Respondent No.1 society. The said 135 persons were conferred with membership by a resolution passed in the meeting of the Respondent No.1 society on 27-7-2012. It is an undisputed position that the said resolution has not been challenged by any party. The Petitioners herein objected to the names of the said 135 person being included in the list of members of the Respondent No.1 society. The said objection was founded on the fact that the said 135 persons do not fulfill the eligibility criteria prescribed by the new bye laws which have come into force on 10-5-2013. The said 135 persons filed their reply to the said application as also the Respondent No.1 society filed its reply opposing the said application and justifying the grant of membership to the said 135 persons. Before the Assistant Registrar, it was contended on behalf of the said 135 persons that they have an undivided share in the ancestral lands and it is on the said basis that the 135 persons sought to oppose the application filed by the Petitioners herein. The application was

heard by the Assistant Registrar, Co-operative Societies, Karveer, who by his order dated 18-1-2014 has allowed the same. A reading of the said order discloses that the Assistant Registrar has refused to accept the case of the said 135 persons that they have an undivided share in the lands owned by their family or the ancestral lands. The Assistant Registrar has observed that the said 135 persons do not fulfill the criteria of owning 10 Ares of land as prescribed by new bye law No.6(3) of the model bye laws which have come into force on 10-5-2013. The Assistant Registrar has prepared a table which is annexed to the said order as Annexure-A wherein the Assistant Registrar has in the columns mentioned in the table made remarks as to whether the said 135 persons have filed 7/12 and 8A extracts as also whether they have complied with new bye law No.6(3). The Assistant Registrar as indicated above allowed the objection raised on behalf of the Petitioners and dismember the said 135 persons and directed the Respondent No.1 society to remove the names of the said 135 persons from the list of members.

4 The said order dated 18-1-2014 passed by the Assistant Registrar was challenged by the Respondent No.1 society by filing an Appeal under Section 152 of the Maharashtra Co-operative Societies Act. The Divisional Joint Registrar has by the impugned order dated 31-12-2014 has allowed the Appeal and set aside the order dated 18-1-2014 passed by the Assistant Registrar. The Divisional Joint Registrar has held that since the model bye laws have come

into force after the membership was conferred on the said 135 persons vide resolution dated 27-7-2012, the said model bye laws would not apply and therefore there was no need for the said 135 persons to fulfill the eligibility criteria of holding 10 Ares of land in the area of operation of the Respondent No.1 society as mandated by the new bye laws. As indicated above, it is the said order dated 21-12-2014 which is taken exception to by way of the above Petition.

5 It is submitted on behalf of the Petitioners by the Learned Counsel Mr. Patwardhan that assuming that the Divisional Joint Registrar was right in holding that the new bye laws do not apply to the said 135 persons. Nevertheless in terms of the old bye laws 5(6) a member is required to file documents in support of his holding. It is further submitted by the Learned Counsel that the member has also to submit what is called a Net Credit Limit document which facilitates disbursal of loan from a Vividh Karyakari Society to the agriculturist member. This being not done in the instant case, the order that has been passed on the touchstone of the new bye law No.6(3) can therefore also be sustained in terms of old by law No.5(6). This is the principal contention of the Learned Counsel appearing for the Petitioners though a contention was also sought to be raised as regards the case put up by the 135 persons in respect of their undivided shares in the lands in question. The Learned Counsel also sought to question the locus standi of the Respondent

No.1 to file the Appeal challenging the order passed by the Assistant Registrar Co-operative Societies, Karveer.

6 Per contra the Learned Counsel Mr. Borkar appearing for the Respondent No.1 society would justify the filing of the Appeal by the Respondent No.1 society and would contend that since the membership was conferred on the said 135 persons by resolution dated 27-7-2012, it is the bounden duty of the Respondent No.1 society to defend its action of conferring membership on the said 135 persons and hence the Respondent No.1 society has the locus standi to file the Appeal before the Divisional Joint Registrar. The Learned Counsel would contend that since it was never the case of the Petitioners that bye law No.5(6) applies, the said case has not been tested by the authorities below and therefore the Petitioners cannot be allowed to urge the said contention at this stage in the above Writ Petition. The Learned Counsel would contend that assuming by old bye law No.5(6) applies then the said 135 persons having demonstrated before the First Authority that they have an undivided share in the ancestral or family land can be said to have complied with the said old bye law No.5(6).

7 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above the Appeal filed before the Divisional Joint Registrar is by the Respondent No.1 society, the filing of the

said Appeal is taken exception to by the Petitioners on the ground of the locus standi of the Respondent No.1. However, in my view, there is no substance in the said challenge as the Respondent No.1 society is undoubtedly entitled to defend its action of conferring membership on the said 135 persons when the same is called in question by the Petitioners and hence in my view, the Respondent No.1 society had the locus to file the Appeal in question. In the said context a useful reference can be made to the judgment of the Division Bench of this court reported in the matter of **Dinesh Vs. State of Maharashtra**¹. In the said judgment the Division Bench has referred to the judgment of the Apex Court in the matter of **Daman Singh & Ors. Vs. State of Punjab & Ors.**² wherein the Apex Court has observed that once a person becomes a member of the society he has no independent rights than those given by the statute and the bye laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.

8 In so far as the challenge to the impugned order is concerned, the said challenge is on the ground that the said 135 persons have admittedly not fulfilled the eligibility criteria mentioned in bye law No.6(3) of the model bye law which have now come into force. In so far as the said aspect is concerned, the Appellate Authority i.e. the Divisional Joint Registrar has rejected the said

1 2008(6) Mh.L.J.819

2 AIR 1985 SC 973

case of the Petitioners by holding that the new bye laws i.e. model bye laws have no application considering the fact that the membership has been conferred on the said 135 persons prior to the said model bye laws having come into force. In my view, the said finding of the Divisional Joint Registrar cannot be taken exception to as the conferment of membership to the said 135 persons, cannot be considered on the touchstone of the bye laws which have come after they were conferred with the membership. It is the alternative submission therefore of the Learned Counsel for the Petitioners that is required to be considered. The alternative submission is that assuming that the new bye laws do not apply even in terms of the old bye laws, a member is obligated to furnish information as regards his land holding within the area of operation of the Respondent No.1 society. Undisputedly the said aspect has not been taken into consideration by the authorities below as the Assistant Registrar has proceeded on the premise that the new bye laws are applicable and on such consideration has passed the order dated 18-1-2014. Before the Appellate Authority the said contention does not seem to have been raised by the Petitioners that even if the new bye laws were not applied even in terms of the old bye laws, the requirement was there to furnish information in respect of the land holding. As indicated above, the said 135 persons had placed material before the Assistant Registrar in satisfaction of the eligibility criteria albeit in terms of the new bye laws, the same has been rejected by the Assistant Registrar on the touchstone of the new bye laws which have come into force

and has not been considered from the perspective of the old bye laws. The Appellate Authority has allowed the Appeal only on the ground that the new bye laws cannot be applied to the said 135 persons as they were granted membership much prior thereto.

9 In my view, therefore, the orders passed by the Assistant Registrar as well as the Divisional Joint Registrar are required to be quashed and set aside and the matter would have to be relegated back to the Assistant Registrar for a denovo consideration of the application filed by the Petitioners. Hence the following directions :

(i) The impugned order dated 31-12-2014 passed by the Divisional Joint Registrar as also the order dated 18-1-2014 passed by the Assistant Registrar is quashed and set aside and the matter is relegated back to the Assistant Registrar for a denovo consideration of the application filed by the Petitioners.

(ii) The said application would have to be considered on the touchstone of the applicability of the old bye law No.5 governing membership and not as per the new bye law No.6. The Assistant Registrar would take into consideration the material that would be placed by the parties including the said 135 persons.

(iii) The Respondent No.1 society or the said 135 persons would be at liberty to place the relevant material in support of their respective assertions. The Assistant Registrar would take into consideration the said material at the time of adjudication of the said application filed by the Petitioners.

(iv) In view of the fact that the orders dated 31-12-2014 and 18-1-2014 have been set aside. The status-quo ante i.e. prior to the passing of the orders by the Assistant Registrar and the Divisional Joint Registrar would operate and the consequence of the same would follow.

(v) On remand the parties to appear before the Assistant Registrar on 11-8-2015. The Assistant Registrar thereafter to decide the application filed by the Petitioners expeditiously by giving proper opportunity to the parties.

10 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

[R.M.SAVANT, J]