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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 2495 OF 2015

Shri Vhalerean Nemis Gonsalvese and ors. Petitioners

vs

The Divisional Joint Registrar, Cooperative
Societies, Kokan Division, Navi Mumbai and ors..... Respondents

ALONG WITH

WRIT PETITION NO. 2492 OF 2015

Shri Prakash Raghunath Patil Petitioner

vs

District Cooperative Election Officer and
Joint Registrar, Coop. Societies,
Kokan Division, Navi Mumbai and ors..... Respondents

ALONG WITH

WRIT PETITION NO. 2493 OF 2015

Shri Vhalerean Nemis Gonsalvese Petitioner

vs

District Cooperative Election Officer and
Joint Registrar, Coop. Societies,
Kokan Division, Navi Mumbai and ors. Respondents

AND ALONG WITH

WRIT PETITION NO. 2494 OF 2015

Patrick Jokim Furtado Petitioner

vs

District Cooperative Election Officer and
Joint Registrar, Coop. Societies,
Kokan Division, Navi Mumbai and ors. Respondents

Mr. Kulkdeep S. Patil for the Petitioner in all matters.
Ms. Vaishali Nimbalkar, AGP for the Respondents 1 and 2 in all matters.

Mr. Dileep Udhan, District Deputy Registrar, Cooperative Societies, Thane present.

CORAM: ANOOP V. MOHTA, J.

DATE : March 12, 2015

P.C.:

Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

2 Since common issues are involved in all these Petitions, the same are being disposed of by this common order.

3 All the Petitioners are ex-directors of St. Joseph Cooperative Credit Society Ltd., Vasai, (“the Society”) have challenged order dated 3.3.2015 passed by the Divisional Joint Registrar, Cooperative Societies, Konkan Division, Navi Mumbai, thereby though admitted the Revision which is fixed on 6.4.2015, not granted interim relief so prayed for against the recovery order issued by Respondent No.2-District Deputy Registrar, Cooperative Societies, Thane, whereby the recovery certificate issued by Respondent No.2

referring to Section 71-A of Maharashtra Cooperative Societies Act, 1960 (MCS Act) and demanded Rs.1,95,000/- from all members of the managing committee of the Society only because the managing committee, including the Petitioners being the Directors of the Society at the time, spent the said amount while defending the action initiated by Respondent No.2 under Section 78 of the MCS Act. The impugned order, therefore, resulted into rejection of their nominations for the ensuing election of managing committee of the Society in view of Section 71-A(2)(3) of MCS Act. Therefore, these Petitions.

4 Sections 71-A needs to be interpreted to the extent that the managing committee if spent money and/or incurred legal expenses to defend the action under Section 78 of the MCS Act, the amount or costs incurred falls within the ambit of phrase/term “for the purpose of defraying the costs of any proceedings filed or taken by or against any officer of the society in his personal capacity”. Therefore, the managing committee, if incurred legal expenses to defend the proceedings by the Department, the amount so spent needs to be deposited by them as, according to the Respondents, this is nothing but spending the amount in their “personal capacity”. This, in my view, needs to be adjudicated by the Revisional Authority as the

Revision is pending. Even otherwise, this decision must be final before taking action and/or curtailing the rights of such managing committee/directors to participate in ensuing election and by treating them and/or labelling them “disqualified to continue to be the officer of any society or to be officer of any society at any next election and/or any by-election held immediately after the expiration of a period of one month during which such person has failed to pay the amount referred above.”.

5 The Petitioners, as recorded above, have challenged the said action as well as the recovery proceedings. Therefore, unless that attains finality, in my view, there is no question of disqualifying them at this stage of the pendency of the Revision itself as referred above, merely because, the learned Revisional Authority, instead of hearing the Revision finally, postponed the hearing/rejected the interim stay/stay of recovery proceedings and/or the effect of the said recovery order. Therefore, taking overall view of the matter, at this stage, by keeping all points open, but subject to above reasoning, I am inclined to observe that the Petitioners have made out a case for interim relief pending the Revision Applications. Therefore, the effect and operation of order dated 3.4.2014 is stayed till the decision

of Revisions. The Revisional Authority to decide the Revisions as early as possible.

6 In view of the above, the consequential relief, the Petitioners are entitled, is that they cannot be treated as defaulters and/or the rejection of the nomination on the said ground, is therefore, also unsustainable. The Petitioners claim and/or submissions unless decided finally against them and so also the recovery proceedings so initiated, unless attained finality, they are entitled to participate in the ensuing election in question of which today is the last date of withdrawal of nomination. 13.03.2015 is the date for assignment of symbols and the main election is fixed on 23.3.2015.

7 Normally, there is no question of interfering with the election process. However, for the reasons so recorded and as according to me, the impugned order/action is unjust, illegal and contrary to law and as it affects the rights of the Petitioners to participate in the election, but for the action so initiated, they are debarred and, therefore, a case is made out to pass interim order/protective order as prayed. The concerned Respondents need to

consider such issues at the earliest and in a given time. Having heard the parties, the Application for interim relief ought to have been considered from the point of view of the mandate of Section 71-A and the effect of which takes away the rights, debarring the persons from participating in the election. The Revisions, if filed within the limitation, therefore, need to be adjudicated at the earliest. Therefore, by keeping all points open, I am inclined to interfere with the impugned order.

8 Therefore, the following order :

ORDER

(i) Impugned order dated 3.3.2015 passed by passed by the Divisional Joint Registrar, Cooperative Societies, Konkan Division, Navi Mumbai, is quashed and set aside to the extent of rejection of said Application, I am inclined to replace the same by granting the stay of impugned action of recovery dated 3.4.2014.

(ii) The Revisions are expedited and to be disposed of as early as possible.

(iii) Impugned orders of rejection of their nomination dated 25.02.2015 and 3.4.2015 are quashed and set aside.

(iv) The Petitioners nominations, if otherwise legal, need to be considered by Respondent No.2 in accordance with law.

(v) It is made clear that the election process be proceeded accordingly as fixed. However, the election results will be subject to the final outcome of Revisions and/or that the recovery certificate attains finality.

(vi) The Petitioners to cooperative in all the proceedings.

(vii) All the writ petitions are disposed of accordingly.

(viii) Parties to act on the basis of an authenticated copy of this order.

(ix) As the matters are heard in Court and the concerned Officer is present, the formality of communication of order should not be insisted.

(x) Rule in all the matters are disposed of accordingly.

(xi) There shall be no order as to costs.

(ANOOP V. MOHTA, J.)