

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.759 OF 2015

IN

WRIT PETITION NO.9834 OF 2009

Shri. Suresh Pandurang Adsule and others .. Applicants

IN THE MATTER BETWEEN

Shri. Sadashiv Vithoba Jadhav and others ...Petitioners

Versus

State of Maharashtra and others .. Respondents

Ms. Neeta Karnik, for the Applicants.

Shri. Rahul D. Oak, for the Respondent No.5.

Mrs. Vaishali Nimbalkar, AGP for the Respondent Nos.1 to 3.

CORAM : R.M. SAVANT, J.

DATE : 24th MARCH, 2015

PC.

1. The above Civil Application has been filed for the following reliefs-

- “a) i) Stay the impugned order dated 04.09.2008 passed by the Respondent No.2 in Revision No.521 of 2005 and
ii) Stay the impugned recovery and penal action initiated by the Respondent No.3
iii) and Permit the Applicants to contest the society elections scheduled on 15.04.2015 or so from thereafter”

The Applicants are the original Petitioners who have filed the above Writ Petition challenging the order dated 04.09.2008 passed by the Hon'ble Minister of State for Co-operation Government of Maharashtra, by which order the Appeal filed by the Respondent No.5 herein came to be allowed and the directions which are in the operative part of the said order came to be issued which directions for the sake of ready reference are reproduced herein under-

“The impugned order dated 24.03.2015 passed by Opponent No.16 is hereby quashed and set aside.

The Order dated 23.09.2005 is hereby confirmed with following directions:

The Deputy Registrar, Co-operative Societies, Thane city is hereby directed to submit his report in respect of the expenses incurred by managing committee of Opponent No.1 Society during the period 1994-95 to 1997 on account of building repairs within a period of two months from the date of this Order.

No order as to the cost of this Revision.”

Hence, by the said order, the order dated 24.03.2005 passed by the Divisional Joint Registrar who was the opponent No.16 in the said proceedings came to be quashed and set aside as also the order dated 23.09.2005 came to be confirmed.

2. The above Writ Petition had come up for admission before a

Learned Single Judge of this Court on 30.08.2010. Whilst admitting the above Petition, a Learned Single Judge (A. S. Oka, J) made observations which can be found in paragraph 2 of the said order dated 30.08.2010. The said paragraph 2 of the order dated 30.08.2010 is reproduced herein under for the sake of ready reference -

“Perusal of the memorandum of revision application preferred before the State Government shows that it was directed only against order dated 23rd September 2005. The impugned order passed by the State Government notes that a copy of the order dated 24th March 2005 was not even produced alongwith revision application. By the impugned order, the order dated 24th March 2005 has been quashed and set aside.”

In so far as interim reliefs are concerned, Rule on interim relief was made returnable on 21st September 2010. However, the above Petition has not been heard for interim reliefs. A reading of the said order dated 30.08.2010 therefore discloses that though the Revision was directed against the order dated 23.09.2005 which was passed in Appeal filed by the Respondent No.5 the order dated 24.03.2005 which was passed in the Appeal filed by the Petitioners herein came to be quashed and set aside, though there was no challenge to the said order in the Revision.

3. By the said order dated 24.03.2005 the Applicants/Petitioners have been exonerated of the charges which were levelled against them in respect of the amount they have spent on food which was served during

the committee meetings. In so far as the order dated 23.09.2005 is concerned, the said order was passed in an Appeal which was relating to the allegation made in respect of the amounts spent on the repairs of the building against the committee members which include the Petitioners herein. A reading of the order dated 04.09.2008 passed by the Hon'ble Minister indicates that the Deputy Registrar Co-operative Societies, Thane City was directed to submit his report in respect of the expenses incurred by the managing committee of Opponent No.1 society during the period 1994-95 to 1997 on account of building repairs. In so far as the said aspect is concerned, the Learned AGP informs this Court that the Assistant Registrar has conducted inquiry and submitted report on 11.10.2009. The said report was challenged by two of the Petitioners herein Shri. Adsule and Shri. Kamble before the Divisional Joint Registrar. The Divisional Joint Registrar has set aside the report submitted by the Assistant Registrar by his order dated 31.03.2011 and directed a fresh inquiry to be conducted. The Learned AGP fairly states that pursuant to the order dated 31.03.2011 the matter has not progressed. Hence, in so far as the Petitioners are concerned, the order absolves the Petitioners of the charges levelled against them which were four in number, and since the order dated 24.03.2005 was not challenged the findings of the Divisional Joint Registrar in the said order can be said to have become final and binding.

4. In so far as the amount spent on building repairs is concerned, the matter has not progressed after the Divisional Joint Registrar has set aside the order passed by the Assistant Registrar on 11.06.2009 as stated by the Learned AGP. Hence, in so far as the Petitioners are concerned, it cannot be said that there is any adverse material against them at this point of time. In my view, therefore, the Petitioners would be entitled to interim reliefs in the above Petition which they have sought by filing the above Civil Application. Hence, the Civil Application is allowed in terms of prayer a) i). The Petitioners would accordingly be entitled to the consequences of the grant of prayer a) i) including their right to contest the elections. Since this Court is required to consider prayer clauses ii and iii, the non-mentioning of the said prayers in the instant order should not be considered as the said prayers have been rejected. In fact, in the light of the observations made herein above, namely that the Hon'ble Minister could not have set aside the order dated 23.04.2005 whilst considering the Revision filed specifically against the order dated 23.09.2005. The order passed by the Hon'ble Minister can be said to be suffering from an error of jurisdiction and is therefore required to be quashed and set aside and is accordingly quashed and set aside. Since in so far as the directions contained in the later part of the order passed by the Hon'ble Minister namely the direction to the Deputy

Registrar to submit his report has already been implemented. There is no warrant to keep the above Petition pending. The Learned Counsel for the parties are ad idem on the said aspect. Hence, by allowing the Petition to the extent of quashing and setting aside the impugned order to the extent of the order dated 24.03.2005, the above Petition is disposed of.

[R.M. SAVANT, J]