

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO. 8066 OF 2015**

Amba Kavji Patel & Anr. ..Petitioners
Vs.
Deputy Registrar, Co-operative Societies & Ors. ..Respondents

**Mr. S. K. Shinde with Mr. Mehul Shah i/b Mr. Bharat Joshi for the
Petitioners**

Mr. Shoaib I. Memon for the Respondent Nos.2 and 3

Mrs Neha Bhide “B” Panel Counsel for the Respondent Nos.1, 4 and 5

CORAM : R. M. SAVANT, J.
DATE : 29th APRIL, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 12-3-2015 passed by the Hon'ble Minister for Co-operation, Government of Maharashtra, by which order, the Revision Application being No.47 of 2015 filed by the Petitioners came to be dismissed and resultantly the order dated 14-2-2014 passed by the Deputy Registrar and the order dated 24-12-2014 passed by the Divisional Joint Registrar in Appeal came to be confirmed. There is therefore a concurrent finding recorded by the three authorities below against the Petitioners as regards their continuation as committee members of the Respondent No.1 society.

2 The Petitioners herein are the Secretary and the Joint Secretary of the Respondent No.1 Society and were holding office for the term 2011-2016. The Petitioner No.1 was in arrears of maintenance charges in the sum of Rs.8,14,179/- in respect of flat No.201, whereas the Petitioner No.2 was in arrears of maintenance charges in the sum of Rs.7,99,375/- in respect of flat No.202. It seems that a complaint came to be filed by the Respondent No.2 herein to the authorities under the Maharashtra Co-operative Societies Act (hereinafter referred to as the said Act) on 12-10-2013. The said complaint was inter alia in respect of the Petitioners being defaulters, the alleged mismanagement of the society by the Petitioners, as also the alleged financial irregularities committed by the Petitioners. In so far as the arrears are concerned, the last notice issued to the Petitioners to pay the said arrears of maintenance charges for the said two flats is dated 14-10-2013. Since the Petitioners did not pay the said amount inspite of the notice dated 14-10-2013, the Deputy Registrar Co-operative Societies "H" West ward, Mumbai, acted upon the complaint dated 12-10-2013 and issued a show cause notice on 3-12-2013 under Section 78 of the said Act, on the ground that the Petitioners are defaulters under Section 73CA(1)(e) of the said Act. The said notice was replied to on behalf of the Petitioners by their reply dated 28-12-2013 wherein the Petitioners questioned the notices issued by the Respondent No.2 for payment of the amounts on the ground that the Respondent No.2 was not authorised to do so as there was no resolution of the Managing Committee of

the society. The Deputy Registrar Co-operative Societies fixed the matter for hearing pursuant to the said notice on 23-12-2013 on which day the Respondent No.2 was present before the Registrar as also the Petitioner No.1 Shri Amba Patel. The Deputy Registrar Co-operative Societies heard the said parties. The Deputy Registrar Co-operative Societies did not find any merit in the reply filed by the Petitioners and held that there was no justifiable reason for the Petitioners not to pay the said arrears amounting to Rs.8,14,179 and Rs.7,99,375/-. The Deputy Registrar Co-operative Societies took into consideration the reply of the Mumbai District Housing Federation. In which reply the Federation had informed the Deputy Registrar Co-operative Societies that the provisions of Section 78 are not applicable to the Respondent No.1 society. The Federation further informed the Deputy Registrar Co-operative Societies that the Petitioners are defaulters within the meaning of Section 73CA of the said Act. In the light of the said reply of the Federation, the Deputy Registrar Co-operative Societies deemed it appropriate to proceed against the Petitioners under Section 78A of the said Act and consequently passed an order removing the Petitioners as members of the Managing Committee. The order passed under Section 78A of the said Act is therefore founded on the fact that the Petitioners are defaulters under Section 73CA of the said Act.

3 The Petitioners aggrieved by the order dated 14-2-2014 passed by the Deputy Registrar Co-operative Societies "H" West Ward, challenged the

same by way of an Appeal being Appeal No.36 of 2014 before the Divisional Joint Registrar. The Divisional Joint Registrar by his order dated 24-12-2014, dismissed the said Appeal. The Divisional Joint Registrar as can be seen from the order passed by him has reiterated the findings recorded by the Deputy Registrar as regards the Petitioners being defaulters under Section 73CA and thereby has confirmed the order passed by the Deputy Registrar Co-operative Societies of removal of the Petitioners as committee members of the Respondent No.1 society.

4 The Petitioners aggrieved by the order dated 24-12-2014 challenged the same by way of a Revision under Section 154 of the said Act, by filing Revision Application before the State Government being Revision Application No.47 of 1995. The Revisionary Authority as indicated above has by the impugned order dated 12-3-2015 has dismissed the Revision Application. The Revisionary Authority has recorded the fact that though the notices were issued to the Petitioners, the Petitioners having not paid the arrears of the maintenance charges within 3 months of the last notice dated 14-10-2013 and have paid the said arrears on 28-10-2014 are defaulters within the meaning of Section 73CA(1)(e) of the said Act. The Revisionary Authority has held that since the Petitioners paid an amount of Rs.50,000/- towards the said arrears implicit in the said payment is the acceptance by the Petitioners that they were in arrears. The Revisionary Authority has referred to the

admission of the Petitioners that they had received the notices issued by the Respondent No.1 society on 2-9-2013, 23-9-2013, and lastly on 14-10-2013 to clear all the arrears. As indicated above, it is the said order dated 12-3-2015 which is taken exception to by way of the above Petition.

5 The Learned Counsel for the Petitioner Mr. Shinde would contend that the Deputy Registrar having issued the notice dated 3-12-2013 under Section 78 of the said Act, could not have thereafter invoked Section 78A of the said Act. The Learned Counsel would contend that the Petitioners have not been declared as defaulters under Section 73CA(1) of the said Act and therefore cannot be disqualified to be on the Respondent No.1 society. The Learned Counsel would also question the letter dated 12-10-2013 addressed by the Respondent No.2 to the authorities on the ground that the Respondent No.2 was not authorised by the Managing Committee. The Learned Counsel would lastly contend that prohibition imposed on the Petitioners in the operative part of the order passed by the Deputy Registrar is not contemplated by Section 78A of the said Act, namely not to contest etc. for a period of 5 years.

6 In my view, it is not possible to accept any of the contentions urged by the Learned Counsel for the Petitioners. In so far as the first contention is concerned, it is required to be noted that though the notice was

issued under Section 78 of the said Act in view of the fact that the Federation has by its letter dated 7-12-2014 informed the Registrar that the said provisions could not be invoked in respect of the committee members of the Respondent No.1 society. A reading of section 78A discloses that the procedure prescribed by Section 78 has to be followed before any order can be passed under the said provision. In so far as the compliance of the said procedure is concerned, it is required to be noted that the Petitioners were issued notice dated 3-12-2013 under Section 78 of the said Act to which the Petitioners had also replied vide their reply dated 28-12-2013. Hence in so far as the procedure is concerned, the same can be said to have been followed by the Deputy Registrar before invoking powers under Section 78A of the said Act.

7 In so far as the second submission is concerned, a reading of Section 73CA(1) discloses as to who can be termed as defaulters. In so far as the housing societies are concerned, they are covered by clause (e) which posits that a person is a defaulter if he has not paid the amount within 3 months of the notice being served upon him. In the instant case, it is an undisputed position that the notice was issued on 14-10-2013 and they have paid the amount on 28-2-2014 which is beyond the period of 3 months and therefore the rigors of Section 73CA(1)(e) would apply to the Petitioners and the Petitioners are therefore defaulters within the meaning of Section 73CA. In so far as the letter addressed by the Respondent No.2 is concerned, since the

Petitioners are the Secretary and the Joint Secretary, they cannot be expected to address the letter to the authorities, and hence the Respondent No.2 was required to address the letter to the authorities as well as the Petitioners. In so far as the last submission is concerned, it is required to be noted that Section 78A(b) itself provides that a member who has been so removed shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of any committee of any society till the expiry of period of next one term of the committee from the date on which he has been removed. The “next term” would have to be the term or tenure of the Managing Committee which in the instant case is of 5 years, therefore the disqualification for five years of the Petitioners, cannot be found fault with having regard to the provisions of Section 78A(b) of the said Act.

7 Having heard the Learned Counsel for the parties and having perused the orders passed by the authorities below, this Court does not find any error of jurisdiction or any other illegality or infirmity for it to interfere in the Writ Jurisdiction of this Court. The Writ Petition is accordingly dismissed.

8 At this stage, the Learned Counsel for the Petitioners prays for continuation of the ad-interim order. In the facts and circumstances of the case where the Petitioners are declared as defaulters, the said prayer is rejected.

[R.M.SAVANT, J]