

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.3348 OF 2014**

Vijay Shivaji More & Ors.

... Petitioners

Vs.

Assistant Registrar (C.S.) Ambernath  
& Ors.

... Respondents

Mr. Vinit Naik, Senior Advocate, a/w Patil Sandesh Dadasaheb for the  
Petitioners.

Mr. A. D. Kango, AGP, for Respondent nos.3 and 4.

Mr. Atul G. Damle i/b. Rupesh R. Lanjekar for the Respondent no.5.

**CORAM : A.K. MENON, J.**

**DATED : 27TH OCTOBER, 2015**

**P.C. :**

The present Petition challenges the order passed by the Secretary of the Department of Co-operation and Textile dated 5<sup>th</sup> October, 2013 in Revision Application No.162 of 2010. The Society is formed for promoting agricultural activities and it acquired a plot of land admeasuring 208 acres at Ambernath and sub divided it into small plots. In the year 1999, about 10 acres of land was sought to be acquired by the local Town Planning Authority for the purpose of a garden. It is the petitioners case that with a view to support a public

cause it proposed to develop 10 acres of land as garden from its own funds. Subsequently, the garden was developed and the project is much appreciated, however, later the Managing Committee of the society in its meeting dated 23<sup>rd</sup> July, 2000 passed a Resolution to that effect, copy of which is appearing at Exhibit-A.

2]           It is the case of the petitioners that during the development of the garden project and with a view to implement the said scheme, the society had appointed one Arun Narayan Jadhav one of the Committee Members of the society, as the Manager cum Co-ordinator of the said Project and he was responsible for co-ordination of the project and he was paid compensation for the services rendered by him. In the year 2000-01 during the audit of the society's accounts, queries were raised relating to expenses incurred by the society for the said Garden Project. The petitioners and other Committee Members provided explanations which were forwarded to the Auditors but these explanations were not found satisfactory and as a result an inquiry came to be initiated by the first respondent.

3]           On the basis of the letters dated 29<sup>th</sup> March, 2004 and 10<sup>th</sup> August, 2004 issued by the Chairman and Secretary of the society,

respondent no.2 came to be appointed as Inquiry Officer and show cause notices were issued in May 2005, after which the inquiry proceeded. The petitioners have alleged that they were not supplied with the copies of such letters explaining the allegations. According to the petitioners, the respondent no.1 exceeded his jurisdiction and initiated proceedings under section 88 without complying the provisions of law under section 83.

4] Mr. Naik, learned Senior Advocate, appearing for the petitioners submitted that the findings of the first respondent were perverse. The first respondent vide his report found the petitioners have misappropriated the funds amounting to Rs.11,45,818/- representing the excess expenditure over the amount requested for such a project. The society had relied upon the valuation report according to which the total cost could not have exceeded Rs.16,77,774/-. Mr. Naik submitted that the entire basis of findings is erroneous inasmuch as while coming to the conclusion and quantifying the excess expenditure at Rs.11,45,818/-. The valuer had relied upon the report known as PWD-HDSR which, according to Mr. Naik, was of much earlier period and therefore the valuation was not done on a realistic basis keeping in mind the costs incurred when the work was actually carried out.

5]           The petitioners have also alleged that the proceedings were not conducted in accordance with law and no proper opportunity was given to the appellants that the impugned report and order was passed thereon on 26<sup>th</sup> August, 2005 holding the guilty of causing loss to the society and sought to recover the same. Mr. Naik has also contended that although initially the show cause notice was issued against three petitioners as well as the said Arun Narayan Jadhav subsequently the proceedings against Mr. Jadhav was dropped without any basis although it is the petitioners express case that the project was being overseen by Mr. Jadhav who was a Committee Member attending to the work. Referring to the report, Mr. Naik submitted that there is no basis for finding the petitioners liable for causing alleged loss and exonerating Mr. Jadhav.

6]           Being aggrieved by the aforesaid report the petitioners filed an Appeal before the Divisional Joint Registrar under section 152 of the Act wherein the society was not joined as a party. The appellants being the three petitioners and the respondents being the Assistant Registrar and the Inquiry Officer were the only parties. The society was not impleaded. It is the case of the society that they were unaware of the

filing of the Appeal since they were not a party and subsequently they came to learn of the same only on or about 21<sup>st</sup> January, 2010. A Revision Application came to be filed on 8<sup>th</sup> February, 2010. Since the order impugned in the revision was sought to be passed on 24<sup>th</sup> May, 2006 and since the petitioners came to learn of the same only on or about 21<sup>st</sup> January, 2010 the respondents sought condonation of delay. This application, however, came to be rejected. The respondents filed a Writ Petition No.4911 of 2012 wherein they challenged the refusal to condone the delay. This petition came to be disposed of an order dated 3<sup>rd</sup> September, 2012 condoning the delay on condition of payment of costs. Accordingly thereafter the revision application came to be heard and vide order dated 5<sup>th</sup> October, 2013 the Revision Application was allowed and it set aside the order passed on 24<sup>th</sup> May, 2006 passed by the Divisional Registrar.

7] Having heard the learned counsel, I find from the record that at the time of the inquiry and before making the report a full opportunity was given to the petitioners to present their case. In fact, the parties were allowed to lead evidence both oral and documentary. Full opportunity was given to cross examine the witness as seen from the report dated 26<sup>th</sup> August, 2005, copy of which appears at Exhibit H. As

regards the contention of the petitioners that the society has been vindictive and has chosen to reopen the issue after the period of 4 years. It is obvious that the society was unaware of the pendency of the Appeal as they are not the parties thereto and even otherwise it was found that the delay in approaching the Revisional Authority deserved to be condoned. Apropos the allegation that Mr. Arun Narayan Jadhav was exonerated and the findings of the report do not attribute any fault to. Mr. Naik had submitted that although Mr. Jadhav was initially served with show cause notice, the findings and the report saddled the three petitioners with varying percentages of loss whereas Mr. Jadhav has been let off without any valid reasons.

8] In my view, Mr. Jadhav was a member of the Committee who was not empaneled for the financial dealings and therefore there is no justification in contending that there is a deliberate attempt to release Mr. Jadhav of liability in the present case. The fairness of the inquiry proceedings has not to be called into question. The petitioners were not able to point out any inadequacy in the proceedings before the Inquiry Officer. In the circumstances I find that this is not a case which calls for interference by this Court under Article 227 of the Constitution. In the circumstances, I pass the following order:-

- (i) The Writ Petition is dismissed.
- (ii) No orders as to costs.

9] At this stage, Mr. Naik the learned Senior Advocate states that there is a stay operating of the impugned order which has been operating since 17<sup>th</sup> April, 2014 and that may be continued for sometime in order to enable to petitioners to further remedies. Accordingly the interim order shall continue to operate for a period of four weeks from today.

**(A.K.MENON, J.)**