

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2250 OF 2015

Rahul Niwas CHS Ltd. & Ors.

... Petitioners

V/s.

Divisional Joint Registrar,
Cooperative Societies, Mumbai. & Ors.

... Respondents

Ms. Rita Dilip Bhatia a/w. Bharat V. Bhatia for the Petitioners
Mr. Sachin Damodar Bagal for Respondent Nos.3.
Mr. G. W. Mattos, AGP for Respondent Nos.1, 2 and 4.

CORAM: K.K. TATED, J.
DATED : NOVEMBER 16, 2015

P.C. :

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final hearing at the stage of admission itself.

2. By this petition under Article 226 read with Article 19(1)(c) of the Constitution of India, the Petitioners are challenging the order dated 11/02/2014 passed by the Dy. Registrar, Cooperative Societies, D-Ward, Mumbai, under section 75(5) of the Maharashtra Cooperative Societies Act, 1960 (said Act) and the order dated 18/05/2015 passed by the Divisional Joint Registrar, Cooperative Societies, Mumbai Division, Mumbai in Revision Application No.83/2014 confirming the order passed by the Dy. Registrar, by which both the Authorities held

that the Petitioners are disqualified for a period of 5 years under section 75(5) of the said Act.

3. In the present proceedings, the Dy. Registrar issued notice dated 10/01/2014 under section 75(5) of the said Act to the Petitioners for not calling an annual general meeting within stipulated period i.e. on or before 14/08/2012 and for arrears of dues from committee members viz. Sunil Totuka holding Flat No.9 and 10 for Rs.11,352/- and Rs.12,082/- and Smt.Meena N. Shah for Rs.12641/-. The said notice was replied by the Petitioners through Advocate by letter dated 23/01/2014 and pointed out that Shri Sunil Totuka and Meena N. Shah paid the amount within stipulated time. Moreover, they specifically stated that the annual general meeting was called on 12/08/2012. But same was postponed to 19/08/2012 due to unavoidable circumstances, the Chairman of the society was out of Mumbai and the Treasurer's Uncle had expired and he had gone to Ahmedabad while the Secretary was having an asthma attack. Hence, there is no question of violation of section 75(5) of the said Act. As both the Authorities below failed to consider the reply filed by the Petitioners, they filed the present petition.

4. The learned counsel for the Petitioners submits that the impugned orders passed by both the authorities below required to be set aside only on the ground that they failed to consider the provision of section 75(5) of the said Act properly. She submits that as per section 75(5) of the said Act, it is mandatory on the part of the society to call a meeting and that was done by them by their letter dated

27/07/2012. She submits that because of unavoidable circumstances, the annual general meeting scheduled on 12/08/2012 was postponed to 19/08/2012 and same was held on that day. Hence, there is no question of violation of section 75(5) of the said Act.

5. On the other hand, the learned AGP for Respondent Nos.1, 2 and 4 vehemently opposed the petition. He submits that bare reading of section 75(5) of the said Act shows that the society has to conduct annual general meeting within stipulated time. He submits that in the present proceedings, the Petitioners were supposed to complete the proceedings of annual general meeting on or before 14/08/2012. He submits that in the present proceedings, the Petitioners held the annual general meeting on 19/08/2012. Hence, the impugned orders passed by both the parties are according to law. There is no question of interference at this stage.

6. Similarly, the learned counsel for Respondent No.3 vehemently opposed the present petition. The Respondent No.3 filed his Affidavit-in-Reply dated 05/10/2015. The learned counsel for the Respondent No.3 submits that the inspection report submitted by Mr. B. M. Kakad clearly shows that the Petitioners violated section 75(5) of the said Act. He submits that in a Managing Committee meeting held on 27/02/2012, the committee members were appointed for a period of one year only i.e. from 21/02/2012 to 20/02/2013. He further submits that in the inspection report, it is specifically submitted that the Petitioners were in arrears of societies dues on the date of annual general meeting. Hence, the orders passed by both the Authorities are

according to law. There is no question of interference at this stage.

7. Heard both sides at length. It is to be noted that in the present proceedings the issue involved is only with respect to violation of section 75(5) of the said Act i.e. whether the Petitioners held the annual general meeting within stipulated time i.e on or before 14/08/2012 or not.

8. Bare reading of the section shows that the annual general meeting is to be called within stipulated time. In the present proceedings, the Petitioners, by their circular dated 27/07/2012 called the annual general meeting on 12/08/2012, that was postponed to 19/08/2012 due to unavoidable circumstances. This itself shows that the Petitioners complied with section 75(5) of the said Act by calling annual general meeting on 12/08/2012. Therefore, the impugned orders passed by both the Authorities holding that the Petitioners violated the provisions of section 75(5) of the said Act cannot be sustained in law.

9. In respect of the arrears of dues on behalf of Petitioner Nos.2 and 3, it is to be noted that the Petitioners, in their reply to the Dy. Registrar dated 23/01/2014 specifically stated that the same was cleared by those members in the accounting year 2011-12 itself. In any case, that issue was not considered by both the Authorities at the time of passing the impugned orders. Hence, that cannot be considered at this stage in the Writ Petition.

10. In view of the above mentioned facts, I am of the opinion that the Petitioners have made out a case for allowing the Writ Petition.

11. Hence, the Writ Petition is allowed as follows :

(a) Order dated 11/02/2014 passed by the Registrar, Cooperative Societies "D" Ward, Mumbai under section 75(5) of the Maharashtra Cooperative Societies Act, 1960 and order dated 18/05/2015 passed by the Divisional Joint Registrar, Cooperative Societies, Mumbai Division, Mumbai in Revision Application No.83/2014 is quashed and set aside.

(b) No order as to costs.

(K.K. TATED, J.)