

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

5 WRIT PETITION NO. 1644 OF 2013
WITH CA/11272/2016 IN WP/1644/2013 WITH CA/11271/2016
IN WP/1644/2013

SURESHSING HIRASING RAJPUT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. H.B. Khandare h/for
Mr.Tripathi Manish P.
AGP for Respondents State: Mrs. M.A. Deshpande

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 4th October, 2016

ORDER:

1. The petitioners claim to be the members of four Power Loom Cooperative Societies, as detailed in the writ petition. The said Power Loom Societies had movable and immovable assets. Liquidator came to be appointed in the year 1995-96 over the said Power Loom Societies. The Liquidator, in the year 2007, submitted a final report to the Assistant Registrar, Cooperative Societies on 07.03.2007 with a request to cancel registrations of the said Societies. Pursuant thereto, the Assistant Registrar, Cooperative Societies, Selu, under order dated 26.03.2007, cancelled the Registrations of the said Power Loom Societies.

Thereafter, the Registrar, Cooperative Societies issued proclamation for the sale of assets of the said Societies whose registrations are cancelled. The same is assailed in the present writ petition.

2. Mr. Khandare, the learned counsel for the petitioners submits that the Liquidator, having been appointed, had completed his job and submitted his final report. The same is after settling the accounts and clearing of all the liabilities. The cancellation is under section 21 of the Maharashtra Cooperative Societies Act. After the final report is submitted, whatever surplus assets remain are to be distributed amongst the members. Till finalization of the liquidation proceedings, whatever claims are received by the Liquidator, the same have been considered and thereafter, final report is submitted. The Registrar only has to take steps for distribution of the surplus assets to the Members, as required under Section 110 of the Maharashtra Cooperative Societies Act.

3. The learned counsel further submits that even as per Sub Section 3 of Section 109 of the Maharashtra Cooperative Societies Act, General Body Meeting was

convened on 22.11.2006 prior to submission of the final report of the Liquidator. Once the liquidation proceedings culminate into submission of final report, the Registrar, thereafter has no right or authority to sale the assets of the Society. The only option left with the Registrar is to distribute the assets with the sanction of the State Government. The learned counsel further submits that Rule 18-A of the Maharashtra Cooperative Societies Rules would not apply in the present case as the same deals when the Society is de-registered and not when the registration of the Society is cancelled. According to the learned counsel, Rule 90 of the Maharashtra Cooperative Societies Rules also mandates distribution of the surplus assets to the Members of the Society. The Societies have surplus assets. The learned counsel submits that looms have been distributed amongst the members so also one room has been given to each of the members. The impugned order, being against the provisions of the Statute, be set aside and the Registrar be directed to distribute the said assets to the Members of the erstwhile Power Loom Cooperative Societies.

4. Mrs. Deshpande, the learned AGP states that in fact, the Liquidator, did not accomplish the job as required under the Statute. The Liquidator has executed an assignment deed, thereby assigned the debts and the claims as was stated in the final report. As the debts are also shown in the final report of the Liquidator, the same is required to be paid and the same can be paid only from the assets of the societies. As such, valid steps are taken by the Registrar.

5. Considering the record placed before us and the pleadings, it is manifest that the Liquidator has not performed his job as is required under the Statute. The Liquidator has submitted the final report showing the amount payable and receivable. In fact, when the liquidation proceedings have been undertaken and the Liquidator is appointed, it is the job of the Liquidator to settle all the claims and dues. The Liquidator has to scrupulously consider the accounts, claims raised and thereafter, submit final report. In the present case, the final report which is submitted by the Liquidator to the Registrar itself shows some dues payable. The said dues are the ones, reflected in

the balance sheet of the year 1995-96. There is nothing on record to show that during his officiation for 10 to 12 years, the Liquidator has paid off some dues or otherwise. We also do not have the minutes of General Body which was scheduled on 22.11.2006. The same is not produced on record by the respondents. The assignment deed is also executed.

6. There is a distinction between section 21 and section 21-A. Section 21 deals with the cancellation of registration of the society and Section 21A deals with de-registration of the Society. The basis for cancellation and de-registration is different. The procedure involved is also different. When the Liquidator was appointed, after winding up proceedings are over, the registration would stand cancelled. The order also states about the cancellation of the registration.

7. What was the decision taken in the General Body meeting which was slated to be held on 22.11.2006 is not before the Court nor the same is produced though thrice the affidavit in reply is filed. The Registrar should have first satisfied himself about the decision taken in the general body meeting of the

society, about the claims received by the Liquidator and/or the claims received till the last date of liquidation proceeding and then should have proceeded further with the matter. However, it appears that the Registrar had straightway published the notification for sale of the assets. Considering the above, the impugned notice of sale dated 18.02.20013 was stayed by this Court. The said notice has also now become stale.

8. Considering the aforesaid conspectus, the said sale notice dated 18.02.2013 (Exh. A) Stands quashed and set aside.

9. The registrar shall consider the record before it, even the minutes of the General Body meeting if it has taken place prior to submission of the final report of the Liquidator, report of the Liquidator, the claims received by the liquidator. All these aspects are required to be considered by the Registrar before taking further course of action.

10. The petitioners may represent themselves before the registrar and are entitled to bring on record the factual matrix so also the legal position before the

Registrar.

11. The petitioners may appear before the Registrar on or about 17th October, 20016.

12. The Registrar shall, after hearing the petitioner and considering the record as observed above, shall take fresh decision in the matter.

13. Writ petition is disposed of. No costs.

14. In view of disposal of the writ petition, civil application also stands disposed of.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC