IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3306 OF 2012

1. Shahada Taluka Cooperative
Education Society Limited, Shahada
Taluka Shahada, Dist. Nandurbar
(Through its Secretary).

2. Shri Motilal Fakira Patil
Age 64 years, Occ. Agriculture,
R/o Nandarkheda, Taluka Shahada,
District Nandurbar. ..Petitioners

Versus

1. The State of Maharashtra
Through Secretary,
Cooperative Department,
Mantralaya, Mumbai 32.

2. Rajaram Dagadu Patil,
Age 49 years, Occ. Agriculture,
R/o Kahatul, Tq. Shahada,
District Nandurbar.

3. Shri Pradipkumar R. Patel,
Age major, Occ. Doctor,
R/o Piyu Clinic,
Shrikrishna Colony,
Mohda Road, Tq. Shahada
District Nandurbar.

4. Sajan Bhila Patil,
Age major, Occ. Service,
R/o Vadali, Tq. Shahada,
Dist. Nandurbar.

5. Assistant Registrar,
Cooperative Societies,
Shahada, Dist. Nandurbar. ..Respondents

...
Advocate for Petitioners : Shri Chaudhari S.U.
AGP for Respondents 1 & 5 : Shri Korde D.R.
Advocate for Respondent 2 : Shri More Ashok A.
Advocate for Respondents 3 & 4 : Shri Mane D.A. h/f Shri Patil Milind
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: March 28, 2016
...

ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the judgment and order dated 10.1.2012 passed by the Cooperative Appellate Court, Maharashtra in Revision Petition No. 8 of 2001 and the impugned order dated 27.1.2011 passed in Dispute No. CC/N/16 of 2007 by the Cooperative Court, Jalgaon.

5. The learned counsel for the petitioners submits that the petitioner society was registered under the then Maharashtra Cooperative Societies Act in 1925. Subsequently, it was registered under the Bombay Public Trusts Act in 1955.

6. The Commissioner for Cooperation and the Registrar of Cooperative Societies, Maharashtra State, by order dated 10.1.1992 directed the District Deputy Registrar, Cooperative societies to proceed for de-registering such society under the Maharashtra Cooperative Societies Act, 1960 (“MCS Act”)

if they have been registered even under the Bombay Public Trusts Act ("BPT Act"). Direction has been issued to follow the appropriate procedure laid down in law for de-registering such society.

7. It is submitted that the petitioners passed a resolution on 12.7.1992 resolving to de-register the society under the MCS Act so as to continue under the BPT Act. Respondent No.2 herein, filed a Dispute No.134 of 1999 for challenging the said Resolution. However, he sought leave to withdraw the said dispute and by the order of the Court, the said dispute was disposed off as withdrawn on 21.11.1992.

8. The petitioner submits that the Resolution dated 12.7.1992 was not forwarded to the Registrar for the action of de-registration under Section 21A of the MCS Act. A fresh resolution was passed on 12.8.2007 after receiving a notice from the Assistant Registrar, Cooperative Societies, dated 13.1.2006 that the petitioner society should be de-registered under the MCS Act.

9. It is further stated that respondent No.2 then filed a Dispute No.16 of 2007 before the Cooperative Court on 10.8.2007 for challenging the proposed meeting that was convened on 12.8.2007. The petitioner subsequently raised an issue of jurisdiction by application dated 12.1.2010. By the impugned order dated 27.1.2011, the application was rejected by the Cooperative Court. The petitioner preferred Revision NO.8 of 2011 before the Cooperative Appellate Court, which was dismissed by order

dated 10.1.2012.

10. Grievance of the petitioner is that once the resolution has been passed for de-registering the society under the MCS Act, the Registrar, Cooperative Societies is to take further action after the said resolution is submitted / filed in its office. Issue of de-registration can be entertained by the Registrar, Cooperative Societies under Section 21A read with Rule 18C. The Cooperative Court does not have the jurisdiction to deal with the said issue.

11. The petitioners, therefore, pray that both the impugned orders be set aside and the Dispute No. 16 of 2007, pending before the Cooperative Court be dismissed for being untenable in law.

12. Learned AGP for respondent Nos.1 and 5, as well as Shri More, learned Advocate for respondent No.2 and Shri Patil, learned Advocate for respondents 3 and 4, support the impugned order.

13. Contention of Shri More and Shri Patil, learned Advocates is that the dispute is only with regard to the legality of the meeting that was convened on 12.8.2007. If the meeting is held to be illegal, the business transacted in the said meeting would be non-est. Whether a meeting has been properly convened or not is for the Cooperative Court to decide under Section 91 of the MCS Act. It is therefore, prayed that the petition be dismissed.

14. I have considered the submissions of the learned Advocates for the respective sides.

15. Section 21A of the MCS Act and Rule 18C of the MCS Rules,1961 read as under:-

"Section 21A - De-registration of societies.

(1) If the Registrar is satisfied that any society is registered on mis-representation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, [or any primary agricultural co-operative credit society using the world 'Bank', 'Banker' or any other derivative of the world 'Bank' in its name] he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society :

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any Court merely on the ground that individual notice is not served on any such member.

(2) When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained

in this Act or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.

(3) Subject to the rules made under this Act, the Official Assignee shall realise the assets and liquidate the liabilities within a period of one year from the date he takes over the charge of property, assets, books, records, and other documents, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the total period does not exceed three years in the aggregate.

(4) The Official Assignee shall be paid such remuneration and allowances as may be prescribed; and he shall not be entitled to any remuneration whatever beyond the prescribed remuneration or allowances.

(5) The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any[2][officer below the rank of a Joint Registrar of Co-operative Societies.]"

Rule 18C of the MCS Rules reads as under:-

"18C. Manner of issue of public notice of the proceedings of de-registration of society: -

(1) Where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records of the office of the Registrar, and in the opinion of the Registrar it is not practicable to serve notice of

hearing on each such individual member as contemplated under the proviso to sub-section (1) of Section 21 A, a public notice of the proceedings of the de-registration of society shall be published in two local newspapers having wide circulation in that locality in which the registered office of the society proposed for de-registration is situated, and of which at least one shall be in the Marathi language. A copy of the said public notice shall be sent to the registered address of the society by registered post acknowledgement due together with the directives to display it in the office of the society. Such copy of the notice shall also be displayed on the notice board in the office of the Registering authority. If the notice sent by such registered post is returned undelivered, the notice shall be treated as having been duly served, but a copy of the said notice shall be displayed on the notice board in the office of the society.

(2) Such public notice shall contain, amongst others, the following items, namely,—

(a) the reasons for initiating the proceedings for de-registration of the society;

(b) the date by which any aggrieved person may submit his written statements as to why the proposed action should not be taken;

(c) the date on which and the place where the Registrar shall give an opportunity of being heard to any aggrieved person;

(d) the proposed action contemplated under the provisions of sub-sections (2) Section 21 A."

16. It is not in dispute that the prayers set out by the disputant is with regard to the legality of the meeting convened on 12.8.2007 and issue No.6 on the agenda for the said meeting. If it is established that the meeting was convened illegally, the business transacted in the said meeting would not be rendered legal. Section 21A and Rule 18C is with regard to the Registrar initiating action for de-registering a society if it is found to have been in-appropriately registered for the reasons set out in Section 21A. In the instant case, the Commissioner of Cooperation and Registrar of Cooperative Societies have issued a direction which is followed by the Assistant Registrar addressing a letter to the petitioner on 13.1.2006 for de-registering the society only for the reason that the petitioner is registered under the BPT Act. I do not find that the Registrar has initiated any proceedings for reasons covered by Section 21A.

17. The petitioner has relied upon the judgment of this Court in the matter of Mahalaxmi Railway Karmachari Sahakari Griha Nirman Sanstha Limited Vs. Anil Wamanrao Gawande and others [2002 (Suppl)(2) BCR 668]. In this judgment the issue of expulsion of members under Section 35 of the MCS Act was considered. Considering the proviso to Section 35(1) as well the proviso to Section 35(2), this Court concluded that no resolution would be effective unless it is approved by the Registrar. In the instant case, the legality of the meeting convened on 12.8.2007 has been questioned in the dispute filed by respondent No.2. Same is, therefore, not excluded from the ambit of Section 91 of the MCS Act. The judgment of this Court in the case of Mahalaxmi (supra) would not be applicable to this case.

18. In the light of the above, considering the specific prayers of the disputants in Dispute No.16 of 2007, I do not find any reason to cause any interference in the impugned orders. Suffice it to say that the Cooperative Court shall decide Dispute No.16 of 2007 only with regard to the prayers put forth in the plaint dated 10.8.2007 and shall endeavour to decide the said dispute as expeditiously as possible and preferably on/or before 31.8.2016.

19. This petition is, therefore, disposed off. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

...

akl/d