

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

WRIT PETITION NO. 3895 OF 2016

Appasaheb Tukaram Jadhav and Others

..PETITIONERS

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. A.D. Shinde, Advocate for petitioners.

Mr. N.D. Sonawane, Advocate for Respondent No.3.

Mr. Dilip Bankar, Advocate for Respondent No.4.

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CORAM : T.V. NALAWADE, J.

DATED : 15th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the learned Assistant Registrar, Co-operative Societies, Rahuri under Section 77(A) of the Maharashtra Co-operative Societies Act, 1960 by which administrator is appointed on Respondent No.3 – co-operative society. Both sides are heard.

2. The petitioners were elected as members of managing committee of Respondent No.3 – society for the term 2010-15. The elections were declared as the term was expiring and the elections are held also and then the appointment of administrator is made. In Writ Petition No. 1013 of 2016, this Court had given direction to keep separate

the votes of 21 members as there was dispute over their entitlement to vote in the election and due to that the results of the election for the period 2016-21 could not be declared and new committee could not take over the charge. In view of this circumstance, the Assistant Registrar has made the order of appointment of administrator.

3. The learned Counsel for petitioner submitted that there was no fault of petitioners and only due to order made by this Court, the results could not declared and so it was not proper on the part of Assistant Registrar to appoint administrator. It was submitted that previous committee could have continued till the new committee was available to take charge of affairs. The other side submitted that in view of the amended provisions of the aforesaid Act, not for a single day such continuation of the previous committee was possible and the petitioners have played every tactics to see that they continue in power even when their term had expired.

4. The learned Counsel for respondent placed reliance on observations made by this Court in *Writ Petition No. 6221 of 2016 (Rahul Appasaheb Patare and Others Vs. The Divisional Joint Registrar, Co-operative Societies, Nashik and Others)* decided by this Bench. The observations which are applicable in the present matter are at

paragraph nos.6 and 7 and they are as under:

“6) The provision of section 77A of the Act gives power to the Registrar to make appointment of Administrator under various circumstances and one of the circumstance is expiry of the term of the office bearers. The relevant portions of section 77A (1) (b) and other relevant portions are as under :-

"77A. Appointment of member of committee, new committee or administrator, where there is failure to elect member, to constitute committee or where committee does not enter upon office

(1) Where the Registrar is satisfied that,-

(i-a)

(a)

(b) the term or extended term as the case may be, of the committee of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the members required to fill the vacancies;

(c)

(d)

(e)

(f)

the Registrar may, either suo-motu or on the application of any officer of the society, by order appoint-

(i) any member or members of the society to be the member or members of the committee to fill the vacancies;

(ii) a committee, consisting of not more than three members

of the society; or one or more administrators, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office:

Provided that, before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the notice and consider all objections and suggestions received by him within that period:

Provided further that, it shall not be necessary to publish such notice in any case where Registrar is satisfied that immediate action is required to be taken or that it is not reasonable practical to publish such notice.

(2)

(3) The Committee or Administrator so appointed shall hold office for a period of six months from the date of assuming the management of the society and shall make necessary arrangements for constituting a new committee within the said period and for enabling the new committee including any new committee referred to in clause (f) of sub-section (1), which is determined by the Court to have been legally elected, to enter upon office.

Provided that, if a new committee is not, or can not be constituted at the expiry or termination of the term of office of the committee or Administrator, for any reason beyond the control of the committee or Administrator, the term of office of the committee or Administrator, as case may be, shall be deemed to be extended, until the new committee is

duly constituted."

7) Aforesaid proviso to sub section (3) of section 77A came to be deleted with effect from 14.2.2013. The provision of section 73AAA (3) provided as under before amendment :-

"(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee."

The aforesaid provisions show that no scope is left to the directors of the Cooperative Society to continue in the office when the term of the Directors expire and similarly, the office bearers also cannot continue in the office. It appears that the learned Divisional Joint Registrar considered the provision which is already deleted and also the referred the case on which reliance was placed by the office bears viz. 1984 AIR BOMBAY 56 [Ghatageppa Parreppa Mugeru and Ors. Vs. M.R. Naik and Ors.]. The observations in the case were made by this Court in view of the previous provisions of the Act and it was held that there was no failure on the part of the members of the Society to elect members of Managing Committee and so, the previous members were entitled to continue in the office. In that case, there was stay order of the Court to the elections and due to that new members could not be elected after the expiry of term of previous members. This Court has no hesitation to hold that in view of the position of law created after the amendment of 14.2.2013, no such scope is left and the previous managing

committee members or the office bearers cannot continue in their office under any circumstances.”

5. This Court holds that aforesaid observations are applicable in the present matter also. There are more cases on this point. The Division Bench of this Court in ***Writ Petition No. 2629 of 2013 (Dnyndeo Mohan Salunke and Another Vs. State of Maharashtra and Others)*** has made following observations with regard to power of the State Government or authority to the extend the term in favour of the previous managing committee:

“23. The aforesaid provisions do not empower the State Government to grant extension of term in favour of the managing committee of Respondent No.5 – Society whose term has already expired long back in the year 2011. Grant of extension of term by the State Government, by virtue of intervening orders dated 15.12.2011, 30.05.2012 and 27.11.2012, in exercise of powers under Section 157 of the Act, is itself illegal and as such, managing committee of the society would not be entitled to continue in the office. It is the responsibility of the Registrar, in view of provisions of Section 73H to take steps and appoint Administrator.”

Though the observations are with regard to other provision, the observations can be used in view of the amendment made to the provision of Section 77A of the Act. In the case ***2002 (3) Mh.L.J. 358***

(Ashok Maharu Thakare and Others Vs. State of Maharashtra and Others), the learned Single Judge at Principal Seat has laid down that when the term of previous managing committee has expired, administrator needs to be appointed and there is no question of giving hearing to the members of previous committee in view of the provisions of Section 77A(1)(b) of the Act.

6. In view of the said position of law, this Court holds that it is not possible to interfere in the order made by the Assistant Registrar, Co-operative Societies. The new committee is now available and today this Court is disposing of the other matters in which order is made by this Court to withhold the results. In the result, petition stands dismissed. The petitioner is to deposit cost of Rs.25,000/- (Rupees Twenty Five Thousands Only) in the account of the society

(T.V. NALAWADE, J.)

SSD