

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8832 OF 2011

RATNA CO-OP HOUSING SOCIETY LTD. AND ANR
VERSUS
THE STATE OF MAH AND ORS

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Advocate for Petitioners : Mr. G.D. Kale, Advocate h/f. Mr. M.V. Nagarkar.

AGP for the Respondent : Mr. N.B. Patil

Advocate for respondent No.4 : Mr. C.R. Deshpande.

**CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 12TH JULY , 2016.**

PER COURT:

1] The order passed by the Deputy Registrar and Confirmed in Revision, by the Divisional Deputy Registrar are assailed in this petition.

2] Mr. Kale, learned counsel for the petitioner submits that Mr. Pandit is a certified auditor who conducted the audit from 1994 to 2009. There is no provision under the Maharashtra Cooperative Societies Act, either to accept or reject the audit report and the same is also accepted by the authorities while passing the impugned order, still, the Deputy Registrar in its order has observed that, prima facie, the audit report submitted by the present petitioner does not appear to be proper. According to learned counsel, even the present petitioners had filed objection to the audit conducted by the present respondent No.4. It was stated that enquiry is required to be conducted in respect of the said audit report also. However, same is not concluded as well and the impugned orders are passed. The objection which is raised by respondent No.4 to the audit report of the

petitioner, same objection is raised by the petitioner to the audit report of respondent No.4. According to learned counsel, based on the documents, the said audit report is filed by the Auditor Mr. Pandit.

3] Mr. Deshpande, learned counsel for the respondent No.4 submits that respondent No.4 is the President of the society. Mr. Surwase was appointed by the Deputy Registrar to conduct the audit of the society. Pursuant thereto, said Mr. Surwase has conducted the audit of the society since 1994 to 2009, as no audit was conducted by the said society from the year 1994. Learned counsel submits that there is no provision under the Maharashtra Cooperative societies Act either to accept or reject the audit report. Still, considering that there are two contrary audit reports on record, it was incumbent upon the Deputy Registrar to accept one of those reports, and the Deputy Registrar on scrutiny found that the audit report of Mr. Pandit is not as per the record and only based on the oral information.

4] Learned counsel further submits that even in a dispute presented under Section 91 of the Maharashtra Cooperative Societies Act before the Cooperative Court, an application for injunction filed by the petitioner has been rejected and even Misc. Appeal filed against the same has been dismissed. That would show that the respondent No. 4 is working as a President.

5] In the present petition, we are not concerned about the membership of any member or as to who at present is the office bearer. Same would be considered by the Court dealing with the said dispute. The

learned counsel for both the parties, so also, the authorities who have passed the impugned orders are unanimous on one aspect that there is no provision in the Maharashtra Cooperative Societies Act, wherein, the deputy Registrar can pass order, accepting or rejecting a particular audit report.

6] The State has filed an affidavit and the learned AGP has contended that petitioner submitted an application to decide the membership of respondent No.4 first, and to call record of respondent No.4. The said application was rejected and the said order was challenged before the revisional authority, which is pending. On 9.5.2011, the matter was kept for hearing. The petitioner and their advocate remained absent. Thereafter the matter was closed for orders. The petitioners were directed to submit record from time to time. However, they did not submit record. Since the petitioner did not submit any record before the respondent No.3, the authority has rightly concluded that the audit report of Mr. Pandit creates a doubt and same is without any record and thus the allegation of respondent No.4 cannot be disbelieved.

7] Mr. Kale, learned counsel submits that the petitioner is ready to submit the record. In fact, same should have been the stand before the Deputy Registrar. When the objection to the audit report conducted by Mr. Surwase and Mr. Pandit had been taken by either of the parties, it would have been proper on the part of the authority to consider both the objections simultaneously to arrive at a proper conclusion. Even the order is not specific. It only says that, prima facie, the audit report of Mr. Pandit

does not appear to be proper. If the Deputy Registrar ventured to exercise jurisdiction, he should have given a specific finding and the observations, ought not to be based on prima facie conclusion.

8] Considering the aforesaid conspectus of the matter, and that now, the petitioner is ready to submit the record, we grant one more opportunity to the petitioner. As such, we pass the following order :-

[a] The impugned orders are quashed and set aside and the parties are relegated before the concerned Deputy Registrar for deciding the objections raised by the respondent No.4 afresh.

[b] It is made clear that the authority shall also decide upon its jurisdiction while entertaining the objection and if the objections to the audit report of Mr. Surwase is also pending, then the objections raised to the audit reports of both, Mr. Pandit and Mr. Surwase, shall be decided simultaneously.

[c] So far as the pending dispute filed by the petitioner against the respondent NO.4 is concerned, which is now for final hearing, same shall be decided expeditiously by the authority.

[d] Needless to mention that the parties shall get the inter-se dispute amongst themselves decided expeditiously.

[e] Writ petitions are disposed of with these observations and directions.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-