

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1901 OF 2014

Padmachaya Co-op. Hsg. Soc. Ltd. .. Petitioner
vs.
Commissioner for Co-operation
and Registrar of Co-op. Societies
Maharashtra State & Ors. .. Respondents

Mr. P. P. Kulkarni for Petitioner.
Mr. A. R. Metkari – AGP for Respondent Nos. 1 and 2.
Mr. J. S. Yadav with Mr. Nilesh Wable i/b. Mr. V. B. Tapkir for
Respondent No. 4.
Mr. Santosh Pandit – Director of the Petitioner Society present in
person.

CORAM : M. S. SONAK, J.
DATE : 22 FEBRUARY 2016

P.C :

1] The challenge in this petition is to the order dated 30 October 2013 made by the Minister (Co-operative Societies) dismissing the petitioner's revision petition questioning the order dated 30 March 2011 made by the Commissioner (Co-operative Societies) directing a re-audit.

2] The learned counsel for the petitioner has submitted that the petitioner was not afforded opportunity of hearing before the impugned order made by the Minister (Co-operative Societies). The learned counsel has also submitted that on the same date there were two cases before the Minister and the Minister has allowed

one of the revision petitions. The learned counsel has also submitted that the audit in the present case, was carried out before and there was no cause for ordering any re-audit. He also submitted that all the members of the society were quite satisfied with the audit carried out and therefore, there was no reason to order any re-audit.

3] Having heard the learned counsel for the parties and perused the record, there is no case made out to interfere with the impugned order. The affidavit filed by the respondents is not being taken into consideration, since, it is stated that a copy of the affidavit was furnished to the learned counsel for the petitioner just today. Nevertheless, there is no bar to take into consideration the roznama which has been produced by Mr. Metkari on record. Both the roznamas as well as the impugned order indicates that hearing was afforded to the petitioner. In any case, statements in the roznama or in the impugned order with regard to what transpired before an authority, cannot be ordinarily challenged by way of instituting a writ petition. If at all, there is any error or inaccuracy in the matter of record of roznama, or any statement of what transpired before a judicial or quasi judicial authority, the remedy is to perhaps apply before the same authority for correction of its records. However, such so-called errors or inaccuracies cannot be challenged before

this Court in the first instance.

4] That apart, the impugned orders state that certain members of the petitioner society have resolved to re-audit. The impugned order also records that the society was managed and controlled by the members of the Pandit family and several irregularities were noticed. The order made by the Commissioner has merely directed re-audit. The Minister has rightly observed that every possible opportunity will be afforded to the petitioner at the stage of re-audit but that no case is made out to resist the re-audit itself. There is no jurisdictional error or perversity of approach.

5] Accordingly, this petition is dismissed. There shall be no order as to costs.

6] It is however clarified that the observations in the impugned order or for that matter in the present order are only *prima facie* and therefore no cognizance need be taken of such observations at the stage of actual re-audit in pursuance of the impugned order. Further, the Commissioner's order for re-audit was made on 30 March 2011. Therefore, re-audit, in pursuance of the same is hereby expedited.

7] All concerned to act on basis of authenticated copy of this order.

8] After this order was dictated, Mr. Santosh Pandit, one of the directors of the petitioner society states that this matter has been settled between the petitioner and the members who had passed a resolution seeking re-audit. On this basis, he says that there is no necessity to make the order which I have just made. This contention is unacceptable. If indeed, there have been irregularities in the function of the petitioner society then investigation into such irregularities cannot be stalled by arriving at some private settlement between the directors of the petitioner society or for that matter the petitioner society and such members. In fact, this is all the more a reason that the re-audit should be carried out expeditiously and without being influenced by any such private settlements between the parties. It must be remembered that in the functioning of co-operative society, the society has a stake and therefore, investigations of such nature can never be prevented on the basis of private agreements or settlement between the directors and the members, who may have lodged complaints earlier.

(M. S. SONAK, J.)