

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.8331 OF 2016

P. K. Kumar and ors. : Petitioners.

Versus

**The Deputy Registrar,
Co-operative Societies
K/W Ward and ors.**

: Respondents.

**Mr. S K Shinde a/w Mr. Vivek Salunkhe i/by Mr. Ajinkya J Jaibhave for the
Petitioners.**

**Mr. Vaibhav Joglekar i/by Mr. S S Kanetkar for the Respondent Nos.3 to
13.**

Mr. S D Rayrikar, AGP for the Respondent Nos. 1, 14 and 15.

CORAM : R. M. SAVANT, J.

DATE : 23rd March 2016

P.C.

1. The writ jurisdiction of this Court is invoked against the order dated 23/02/2016 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, State of Maharashtra, by which order, the order dated 08/12/2015 passed by the Divisional Joint Registrar, Co-operative Societies came to be set aside and the order dated 23/11/2015 passed by the Deputy Registrar, Co-operative Societies, K/West Ward, Mumbai came to be confirmed.

2. The Petitioners herein are the members of the Petitioner No.3 Society which is a Co-operative Housing Society comprising of about 240 members (This is disputed by the Petitioners, as according to the Petitioners there are 189 members). The elections to the managing committee of the

Petitioner No.3 Society took place in the year 2015 and 10 members were elected to be the managing committee members of the said Society. The Respondent No.1 herein i.e. the Deputy Registrar, K/West Ward issued an order dated 23/11/2015 in exercise of the powers conferred by Section 77(A)(b1) of the Maharashtra Co-operative Societies Act (for short "the said Act"), and appointed Respondent No.2 herein as an Authorized Officer to manage the day-to-day affairs of the Society. The said power was purportedly exercised on the ground that having regard to the fact that only 10 persons were elected, and in terms of the total membership of the Society there ought to be 15 members of the managing committee, and since out of 10 members, 6 members had resigned, the affairs and management of the Society could not be carried out in accordance with the provisions of the said Act and the Rules.

3. The Petitioners, aggrieved by the said order dated 23/11/2015, challenged the same by filing an Appeal before the Divisional Joint Registrar being Appeal No.158 of 2015. In the said Appeal the Petitioners filed an Application for interim relief. By the order dated 08/12/2015, the Divisional Joint Registrar granted an order of status quo and thereby the Society/Petitioners were allowed to carry out the day-to-day affairs of the Society. The Authorized Officer i.e. the Respondent No.2 was also directed to re-open the seal of the Society so as to facilitate the carrying out of the day-to-day affairs. In view of the fact that the said order dated 08/12/2015 was not complied with, the Petitioners filed a Writ Petition being (Lodging) No. 3570 of

2015 in this Court. The said Writ Petition was disposed of by this Court by order dated 21/12/2015 recording the undertaking given by the learned AGP appearing in the said matter that the charge would be handed over to the Petitioners i.e. duly elected body in compliance of the order dated 08/12/2015. It seems that an assurance was given to this Court that the seal on the office of the Society would be opened so that the elected body can take charge of the office. Accordingly the charge came to be handed over to the Petitioners in terms of the order dated 08/12/2015 passed by the Divisional Joint Registrar.

4. The Respondent Nos.3 to 13 took exception to the said order dated 08/12/2015 passed by the Divisional Joint Registrar by filing a Revision Application being No. 892 of 2015 before the State Government. In the said Revision Application, it was the contention of the Petitioners herein that since the Revision was directed against the interim order dated 08/12/2015 passed by the Divisional Joint Registrar, the exercise of the revisionary powers under Section 154 of the said Act was not warranted.

5. The Revisionary Authority i.e. the Hon'ble Minister for Co-operation by the impugned order dated 23/02/2016 allowed the said Revision Application and by the said order the Revisionary Authority has set aside the order dated 08/12/2015 passed by the Divisional Joint Registrar and has confirmed the order dated 23/11/2015 passed by the Respondent No.1 herein i.e. the Deputy Registrar, Co-operative Societies, K/West Ward, Mumbai in the

matter of appointment of the Authorized Officer. The gist of the reasoning of the Revisionary Authority is that though it was required that there ought to be 15 members of the managing committee, since there were only 10 members elected, and out of the said 10 members, 6 members had resigned, the affairs of the Society could not be carried out in accordance with the provisions of the said Act and the Rules, and therefore, exercise of the powers under Section 77(A) of the said Act was warranted, and the order passed by the Respondent No.1 herein i.e. the Deputy Registrar, Co-operative Societies, K/West Ward for appointing the Authorized Officer was justified. In so allowing the Revision Application, the Revisionary Authority has recorded certain findings on merits when the Revisionary Authority was only required to consider whether the grant of interim order dated 08/12/2015 was justified in the facts and circumstances of the case. As indicated above, it is the said order dated 23/02/2016 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra which is taken exception to by way of the above Writ Petition.

6. I have heard the learned counsel for the parties. During the course of the hearing of the above Writ Petition, considering the admitted position that only 10 members were elected to the managing committee, this Court had suggested to the parties whether they are ready and willing to go for fresh elections so that the impasse as regards the management of the society would come to an end and the dispute could be resolved in an amicable

manner. Though the said suggestion was acceptable to the Respondent Nos.3 to 13, the same was not acceptable to the Petitioners, as according to the Petitioners, since their Appeal was pending before the Divisional Joint Registrar, they were entitled to raise contentions in the said Appeal as regards their entitlement to continue as the management of the Society.

7. Be that as it may, with a view to avoid endless acrimony between the Petitioners and the Respondent Nos.3 to 13 and since the Appeal filed by the Petitioners is pending before the Divisional Joint Registrar against the order dated 23/11/2015, it would be just and proper to dispose of the above Petition by issuing the following directions :-

- [A] The impugned order dated 23/02/106 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra is not interfered with.
- [B] The Appeal in question being Appeal No.158 of 2015 pending before the Divisional Joint Registrar is directed to be heard and disposed of latest by 30/04/2016 by giving proper opportunity to the parties.
- [C] The parties to appear before the Appellate Authority on 29/03/2016 which is the next date given by the Appellate Authority.
- [D] The learned counsel for the Petitioners Shri S K Shinde makes a

statement that the Petitioners have no objection if the Applicants who have filed the Application for intervention on 14/01/2016 for their impleadment in the Appeal are allowed to be impleaded in the said Appeal as the Respondents. The Divisional Joint Registrar is directed to permit the Appellants i.e. the Petitioners herein to amend the Appeal so as to array the Applicants in the said Application as the Respondents to the said Appeal. Amendment to be carried out on 29/03/2016 when the parties appear before the Divisional Joint Registrar. The Applicants in the Application would file their reply within one week of 29/03/2016. It is made clear that save and except the said Applicants, no other member would be impleaded.

[E] Though the order of the Revisionary Authority is not interfered with, since certain reservations have been expressed by the Petitioners against the earlier appointed Authorized Officer Smt. Najma Patel, therefore in her place Shri Pramod Padaye, the Certified Auditor is appointed as an Authorized Officer and would continue as Authorized Officer contingent upon the fate of the Appeal and for a period of two weeks after the decision is rendered in the Appeal.

[F] The Petitioners to hand over the charge to Shri Pramod Padaye which process would start latest by 5.15 pm today and to be

completed, as far as possible today itself.

[G] The Authorized Officer would only look after the day-to-day affairs of the Society and would not take any policy decision or expend any amount except towards maintenance of the Society.

[H] In so far as the Appeal is concerned, the contentions of the parties including the contention of the Petitioners that only 4 members have resigned, are kept open for being urged before the Appellate Authority. Needless to state that the Appellate Authority would consider the Appeal on its own merits and in accordance with law uninfluenced by the impugned order as also the fact that the order of the Revisionary Officer has not been interfered with and that the Authorized Officer is directed to take charge of the Society.

[I] The above Writ Petition is accordingly disposed of.

[J] All concerned parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associate/Sheristedar.

[R.M.SAVANT, J]