

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3586 OF 2002

The Maharal Sahakari Samudaik Sheti Society Limited	...	Petitioner/ Org. Respondent
V/s.		
Shri Dwarkanath Narayan Deshmukh & Ors.	...	Respondents

Mr.S.A.Sawant for the Petitioner.

Mr.A.R.Metkari, A.G.P. for Respondent Nos.2 to 4.

CORAM : M.S. SONAK, J.

DATE : 22nd APRIL, 2016.

P.C.

1] Heard Mr.Sawant for the petitioner and Mr.Metkari for respondent no.2, 3 and 4. The respondent no.1, who is, the contesting respondent has been duly served. However, neither the respondent no.1 nor his advocates are present.

2] The challenge in this petition is to the judgment and order dated 26.3.2002 made by the Divisional Joint Registrar of

Co-operative Society, Kokan Division, New Mumbai allowing Revision Application No.236A/2001.

3] In the said revision application, the respondent no.1 had questioned order dated 17.7.2001 made by the Deputy Registrar, Co-operative Society under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (said Act) rejecting the petitioners appeal in the matter of his enrollment as member of the petitioner co-operative society.

4] Mr.Sawant, learned counsel for the petitioner has raised several grounds to challenge the impugned order dated 26.3.2002. However, it is not necessary to advert to all such grounds, since, this petition is required to be disposed of on the short ground that the petitioner-society was not offered any opportunity of hearing by the Revisional Authority before it made impugned order dated 26.3.2002.

5] If the impugned order dated 26.3.2002 is perused, it indicates that the same was made after hearing Advocate S.S.Deshmukh the learned counsel who appeared for respondent

no.1. There is no reference in the impugned order with regard to service of notice upon the petitioner-society.

6] The petitioner, in paragraph 6 of the petition has made the following categorical averments with regard to non service of any notice by the Revisional Authority.

“6. The Petitioners state that being aggrieved and dissatisfied by the said Judgment and Order, the Respondent No.1 preferred Revision Application No. 236A of 2001 under Section 154 of the said Act of 1960 before the Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai. The Petitioners state that Notice of the said Revision Application was never given to the Petitioners. The Petitioner Society was not aware about the said Revision Application till first week of June, 2002 as set out hereinafter. Without hearing the Petitioner Society the said Revision Application was allowed by Order dated 26th March, 2002 passed by the Respondent No.3 thereby quashing and setting aside the Judgment and Order dated 13th/ 17th July, 2001 (Exhibit “A” hereto). The learned Divisional Joint Registrar was pleased to remand back the matter for fresh consideration to the Registrar of Co-operative Societies, Kalyan. A true copy of the said Order dated 26th March, 2002 is annexed hereto and marked as Exhibit “B”. ”

7] Similarly, the petitioner, has raised the following ground at paragraph 7(a) .

“7.

a) *The learned Divisional Joint Registrar totally ignored that the Petitioners were not served with the Notice of the Revision Application and thus the Revision Application filed under Section 154 of the said Act of 1960, could not have been decided without giving an opportunity to the Petitioners of being heard.”*

8] This petition was admitted on 4.7.2002. Till date, none of the respondents have filed any reply to contest the aforesaid averments with regard to non service of notice by the Revisional Authority. Accordingly, this court will have to proceed on the basis that there was no service of notice upon the petitioner-society by the Revisional Authority when it made the impugned order. Non service of such notice constitutes breach of principles of natural justice and fair play. Besides, even Section 154 of the said Act, in terms, provides for exercise of revisional jurisdiction after giving the person affected, an opportunity of having heard. In this case the Revisional Authority, by the impugned order, has purported to set-aside order dated 17.7.2001 made by the Deputy Registrar, which

order was in favour of the petitioner-society. In these circumstances, the revisional jurisdiction could not have been exercised without affording an opportunity of hearing to the petitioner-society.

9] Mr.Sawant also contended that in terms of Section 23(3) of the said Act the decision of the Registrar in a Appeal under Section 23(2) of the said Act has attained finality and therefore no revision lay under Section 154 of said Act.

10] At this stage there is no necessity to decide the aforesaid issue. However, this objection is kept open for decision by the Revisional Authority, now that the impugned order is being set-aside and the revision instituted by respondent no.1 is being restored to file of the Revisional Authority.

11] Accordingly, the impugned order dated 26.3.2002 is hereby set-aside. The Revision Application No.236A/2001 instituted by respondent no.1 is restored to the file of the Revisional Authority i.e. the Divisional Joint Registrar Co-

operative Society, Kokan Division, New Mumbai for fresh disposal in accordance with law. The Revisional Authority to ensure that appropriate notices are issued to the parties before proceeding to dispose of the Revision Application on merits and in accordance with law. Issue as to whether the revision application is at all maintainable, is left open.

12] It is made clear that this court has not adverted to the merits and therefore, all contentions of all parties on the aspect of merits as well as maintainability are specifically kept open.

13] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

14] The parties to appear before the Revisional Authority on 10th June 2016 at 11.00 am. In case, respondent no.1 does not appear on the said date the Revisional Authority is requested to issue a fresh notice to respondent no.1, intimate him the next date in the matter.

15] The learned counsel for the petitioner also undertakes to serve an authenticated copy of this order upon respondent no.1.

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

(M.S. SONAK, J.)