

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

**WRIT PETITION NO.7733 OF 2016
ALONGWITH
CIVIL APPLICATION NO.2434 OF 2016**

Mrs. Rajeshree Khandhar

..Petitioner

Versus

**The Hon'ble Minister for State,
Co-operative Department,
Government of Maharashtra and others**

..Respondents

Shri. Bhupesh V. Samant for the Petitioner.

Mrs. V. S. Nimbalkar, AGP for the Respondent Nos.1 to 3.

**Shri. V. R. Dhond, Senior Advocate a/w Shri. Ashish Kamat & Vishal
Kanade i/by RMG Law Associates for the Respondent Nos.5 to 7 & 9.**

CORAM : R. M. SAVANT, J.

DATE : 5th DECEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 24.02.2016 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra, by which order, the Revision Application filed by the Respondent No.6 herein came to be allowed and resultantly, the order dated 02.12.2014 passed by the Assistant Registrar of Co-operative Societies, 'F/N' Ward, Mumbai, under Section 77A(1)(b-1) of the Maharashtra Co-operative Societies Act, 1960 (For short "the said Act") came to be set aside as also the order dated

20.08.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai came to be set aside.

2 The genesis of the present proceedings lie in the order dated 02.12.2014 passed by the Assistant Registrar, Co-operative Societies, 'F/N' Ward, Mumbai. The said order is one passed under Section 77A(1)(b-1) of the said Act. The said order was preceded by a show-cause notice issued to the Respondent No.5 society by the Assistant Registrar calling upon it to show-cause why an authorized officer should not be appointed for the various omissions and commissions which were alleged in the said show-cause notice. The said show-cause notice was confirmed by the Assistant Registrar by order dated 02.12.2014. The said order was founded on the fact that the annual general body meetings of the Respondent No.5 society were not held for a numbers of years, that though a State Co-operative Election Authority has been established the Respondent No.5 society had proceeded to hold elections on its own and that the accounts of the Respondent No.5 society were not audited. The Respondent No.5 society aggrieved by the said order dated 02.12.2014 challenged the same by way of an Appeal under Section 152 of the said Act before the Divisional Joint Registrar. The Divisional Joint Registrar as can be seen from the impugned order has confirmed the finding of the Assistant Registrar by his order dated 20.08.2015. The gist of the

reasoning as can be seen of the Divisional Joint Registrar is found in the paragraph just before the operative part, wherein the Divisional Joint Registrar has concluded that since the Assistant Registrar was well within his rights to issue show case notice and pass order, he did not find any reason to interfere with the said findings. The Respondent No.5 society aggrieved by the said order dated 20.08.2015 challenged the same by way of a Revision before the State Government under Section 154 of the said Act. The Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra has by the impugned order dated 24.02.2016 allowed the Revision and thereby set aside both the orders i.e. the order dated 02.12.2014 passed by the Assistant Registrar and the order dated 20.08.2015 passed by the Divisional Joint Registrar and has consequently set side the appointment of the authorized officer.

3 The gist of the reasoning of the Revisionary Authority is that both the authorities below have erred in passing the order under Section 77A(1)(b-1) of the said Act on the basis of the elections which were conducted, which were not in accordance with the scheme which was introduced after the amendment to the Maharashtra Co-operative Societies Act and the Rules. The Revisionary Authority concluded that it was not for the Registrar to go into the legality or otherwise of the elections, but it was before the appropriate forum that the said grievance

could be agitated. The Revisionary Authority has also observed that whether an authorized officer could be appointed on a society which does not receive grants from the Government is also questionable. As indicated above, the Revisionary Authority has by the impugned order dated 24.02.2016 allowed the Revision and thereby set aside the orders passed by the authorities below.

4 In so far as the elections to the Respondent No.5 society are concerned, the Learned Senior Counsel appearing on behalf of the Respondent No.5 society draws this Court's attention to a list of dates and events tendered on behalf of the said Respondent as also a compilation of documents. From the list of dates and events, it can be seen that on 13.02.2014, some of the members of the Respondent No.5 society gave a notice for requisitioning a special general body meeting of Respondent No.5 to elect a managing committee inter-alia for the purpose of holding elections by an Election Authority to be appointed under Section 73CB of the said Act. However in so far as the machinery for holding elections under the new act and the rules are concerned, the said list of dates discloses that it is on 16.05.2014 that a notification was issued by the State Government for the first time appointing the State Co-operative Election Authority. The Authority assumed charge from 26th May 2014. It is prior thereto i.e. on 28.02.2014 that a special general body meeting of

the Respondent No.5 was held, in which meeting the new managing committee (one member per floor) of Respondent No.5 was duly elected. It seems that the Petitioner herein was also elected. However the said fact is sought to be denied by the Learned Counsel for the Petitioner. In so far as the show-cause notice by the Assistant Registrar is concerned, a detailed reply has been filed by the Respondent No.5 society dealing with each of the grounds mentioned in the said show-cause notice. It is the case of the Respondent No.5 that its case has not been dealt with by the Assistant Registrar as well as the Divisional Joint Registrar.

It seems that an overwhelming number of members of the Respondent No.5 society also addressed a letter to the Respondent No.3 and thereby supported the stand of the Chairman and the society and submitted that there was no cause or warrant for super-session of the managing committee by appointment of an authorized officer on the Respondent No.5 society. In so far as the other ground is concerned, the same can be said to have been diluted in view of the fact that the elections were held in February 2014 though not under the supervision of the election authority which as indicated came to be appointed much later.

5 In my view, therefore, in the facts and circumstances of the

present case, it was not necessary to interfere with the functioning of the Respondent No.5 society. If the authorities were of the view that elections were required to be held to the Respondent No.5 society then a direction could have been issued to the Respondent No.5 to that effect. The impugned order passed by the Revisionary Authority therefore cannot be taken exception to, no case for interference in the writ jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

6 In view of the dismissal of the Writ Petition, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]