

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12065 OF 2015**

Mr. Ali Imam Hossain **..Petitioner**
Vs.
The Divisional Joint Registrar C. S. & Ors. **..Respondents**

**WITH
CIVIL APPLICATION NO.2445 OF 2016
IN
WRIT PETITION NO. 12065 OF 2015**

Mr. Mahendra B. Parmar **..Applicant**

In the matter between
Mr. Ali Imam Hossain **..Petitioner**
Vs.
The Divisional Joint Registrar C. S. & Ors. **..Respondents**

Mr. Swapnil Bangur i/b Mr. J. R. Vyas for the Petitioners
Mr. G. S. Hegde i/b Ms Pinky M Bhansali for the Respondent Nos.3 to 5
and for the Applicant in Civil Application
Mrs. V. S. Nimbalkar AGP for the Respondent Nos.1 and 2

CORAM : R. M. SAVANT, J.
DATE : 29th NOVEMBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 6-11-2015 passed by the Divisional Joint Registrar, Mumbai Division, Mumbai, by which order the Revision Application filed by the Petitioner herein came to be dismissed and resultantly the order dated 10-7-2015 passed by the Deputy Registrar Co-operative Societies, H/W Ward Mumbai under Section

75(5) of the Maharashtra Co-operative Societies Act 1960, came to be confirmed.

2 The Petitioner herein was the secretary of the Respondent No.6 society during the relevant period i.e. 2013-2014. The Respondent Nos.3 to 5 herein are the members of the Respondent No.6 society. The said Respondents had filed a complaint with the Deputy Registrar Co-operative Societies H/W ward, Mumbai against the office bearers of the Respondent No.6 society i.e. the Chairman, Secretary and the Treasurer seeking their disqualification under Section 75(5) on the ground that they had not held the Annual General Meeting (AGM) for the year 2013-2014. The Petitioner herein who as indicated above was the secretary of the society filed the documents in opposition to the said complaint which documents were inter alia the notice dated 26-7-2014 in respect of the said AGM which was to be held on 9-8-2014, the minutes of the meeting held on the said day and the attendance sheet of the members on the said day. It seems that about 8 signatories to the attendance sheet had filed an affidavit stated that no such AGM was held on 9-8-2014 and that the said attendance sheet is false and fabricated and their signatures are also forged. The Deputy Registrar Co-operative Societies H/W Ward, allowed the said application principally on the ground that 8 members who are the alleged signatories to the attendance sheet have filed an affidavit that no such meeting was held. The Deputy Registrar has observed in his

order that there is a doubt as regards whether the AGM was actually held on 9-8-2014. The Deputy Registrar accordingly by his order dated 10-7-2015 allowed the said application filed by the Respondent Nos.3 to 5 and disqualified the Petitioner, the Chairman and the Treasurer from continuing as office bearers and further disqualified them for a period of 5 years.

3 Aggrieved by the said order dated 10-7-2015 passed by the Deputy Registrar, the Petitioner herein filed Revision Application under Section 154 of the said Act before the Revisionary Authority i.e. Divisional Joint Registrar. The Divisional Joint Registrar as indicated above has by the impugned order dated 6-11-2015 dismissed the Revision. The Divisional Joint Registrar has in his order referred to the affidavit filed by the 8 members who are the alleged signatories to the attendance sheet of the AGM. After adverting to the said affidavit, the Divisional Joint Registrar has held that the Deputy Registrar has correctly held the Chairman, Secretary and Treasurer responsible for not holding / conducting the AGM for the year 2013-2014 within the time stipulated by Section 75 of the said Act. Though the order passed by the Divisional Joint Registrar runs into by 8 pages, the reasoning if any can only be found in the penultimate paragraph of the said order. As indicated above, it is the said order dated 6-11-2015 which is taken exception to by way of the above Petition.

4 The principal contention urged on behalf of the Petitioner by the Learned Counsel Mr. Bangur is that the Revisionary Authority has not even considered the material on record vis-a visa the findings recorded by the Deputy Registrar Co-operative Societies. It was the submission of the Learned Counsel that having regard to the serious implications that the order would have to the Petitioner, the least that was expected of the authorities was to consider the material on record and then record a finding as to whether in fact the AGM for the year 2013-2014 was held or not. This having not done by the Revisionary Authority, the order is vitiated on the said ground.

5 Per contra Mr. G. S. Hegde the Learned Counsel appearing for the Respondent Nos.3 to 5 would support the impugned order passed by the Divisional Joint Registrar. The Learned Counsel made an attempt to justify the order passed by the Divisional Joint Registrar by referring to the documents in question. The Learned Counsel would contend that the said documents which inter alia included the affidavit filed on behalf of the 8 signatories would indicate that no such AGM was held by the office bearers of the society. The Learned Counsel would therefore contend that there is no merit in the above Petition which is accordingly required to be dismissed.

6 Having heard the Learned Counsel for the parties I have considered the rival contentions. As indicated above, the instant proceedings

have arisen on account of the application filed under Section 75(5) of the said Act against the office bearers of the Respondent No.6. The consequences of an order passed under Section 75(5) is very serious in as much as the office bearers stand disqualified for the remainder of the terms as also stand disqualified for a period of 5 years. In so far as the case of the Respondent Nos.3 to 5 that the AGM for the year 2013-2014 was not held by the office bearers of the Respondent No.6 is concerned, the said aspect ought to have been adjudicated by the authorities on the touchstone of the material which has come on record. It is required to be noted that on behalf of the Petitioner the notice of the meeting, the minutes of the meeting as also the attendance sheet were relied upon to support his case that such a meeting was held. On behalf of the Respondent Nos.3 to 5 the affidavits filed by the 8 members who were the signatories to the attendance sheet were filed. The Deputy Registrar Co-operative Societies therefore ought to have considered the said material and ought to have if need be permitted the parties to lead evidence by affidavits. However, the said procedure was not followed and merely on the basis of the affidavit filed by the 8 persons who were the alleged signatories to the attendance sheet that the order came to be passed. The matter was further compounded by the Revisionary Authority who has in a manner mechanically confirmed the order passed by the Deputy Registrar Co-operative Societies without considering the efficacy of the documents. In my view therefore, having regard to the time lag, it is not necessary to set aside the order passed

by the first authority i.e. Deputy Registrar, Co-operative Societies. However, the order dated 6-11-2015 passed by the Divisional Joint Registrar is quashed and set aside and the matter is remanded back to the Divisional Joint Registrar for a denovo consideration of the Revision Application in terms of the observations made in the instant order.

7 Since on behalf of the Respondent Nos.3 to 5 a grievance is made in the Civil Application filed by them as regards the manner in which the Petitioner is conducting himself by attempting to change the signatories of the society in respect of the bank account of the society, removing members from the society. To avoid any future controversies and complications, it would just and proper to appoint an Administrator to administer the society. Since it appears that the Chairman and the Treasurer have accepted their disqualification as they have not filed any Petition challenging the impugned order as also had not filed the Revision before the Divisional Joint Registrar, it is for the Deputy Registrar to decide whether the elections to the society are required to be held or not. The said issue is accordingly left to the discretion of the Deputy Registrar who would undoubtedly take a decision in accordance with law. Hence the following directions :

(i) Pending considering of the Revision Application on remand Mr. Suresh Khedekar, Assistant Co-operative Officer, is appointed as Administrator to look

after the affairs of the Respondent No.6 society. He would take charge of the society on 2-2-2016. The Petitioner herein would hand over charge to the said officer.

(ii) The said officer would look after the day to day affairs of the society however would not be entitled to take any policy decision, or deal with the property of the society or expend funds of the society for any other purpose other than the day to day expenses.

(iii) The Administrator would continue to function till the Revision Application is decided and contingent upon the decision the Deputy Registrar would take a decision as to whether he would continue as Administrator in view of the fact that the quorum of the Managing Committee has come down. In any event, the directions as contained in clause (ii) above would operate in so far as the functioning of the Administrator is concerned.

(iv) On remand, the Revision Application to be decided latest by 31-1-2017. The parties to appear before the Divisional Joint Registrar on 6-12-2016 at 3.00 p.m. The Divisional Joint Registrar would thereafter be at liberty to fix the schedule as per his convenience, however decide the same latest by 31-1-2017.

(v) The contentions of the parties are kept open for being urged before the Revisionary Authority.

7 The Petition is allowed to the aforesaid extent and is disposed of.

8 At this stage the Learned Counsel for the Petitioner applies for stay of the appointment of the Administrator. In the facts and circumstances of the case, the said prayer is rejected.

9 In view of the disposal of the above Petition, Civil Application No.2445 of 2016 does not survive and to stand disposed of as such.

[R.M.SAVANT, J]