

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1790 OF 2016

1. Ashok Daswani,]
Age 60 years,]
of Bombay Indian inhabitant]
residing at Flat No.41.]
2. Lal G. Daswani,]
Age 59 years,]
of Bombay Indian inhabitant]
residing at Flat No.61,]
both are residing at Annapurna Link]
Premises Co-op. Society Ltd.]
Plot No.403, Linking Road,]
Khar (W), Mumbai-400052.]
3. Annapurna Link Premises Co-op.]
Society Ltd.]
a Co-operative Housing Society duly]
registered under the provisions of]
Maharashtra Co-op. Societies,]
Act, 1960 having office and address at]
Plot No.403, Linking Road,]
Khar (W), Mumbai-400 052.]..Petitioners

Versus

1. Divisional Joint Registrar,]
Co-op. Societies, Mumbai Division,]
Mumbai, having its office at]
6th Floor, Malhotra House,]
Mumbai-400001.]
2. Deputy Registrar, Co-op. Societies,]
'H/W' Ward, having his office at]
Bhandari Co-op. Bank]
Building, 2nd Floor, P L. Kale Guruji]
Road, Dadar (W), Mumbai-400 028.]

3. Sanjay Khemka,	]
Age 56 years,	]
of Bombay Indian Inhabitant residing	]
at Flat No.502, Phonix Tower CHS Ltd.	]
Senapati Bapat Marg, Mumbai-400 013.	]..Respondents

Mr. N. N. Bhadrashete for the Petitioners.
Mr. Rajiv Mane, AGP for the Respondent Nos.1 & 2.
Ms. Usha R. Tiwari for the Respondent No.3.

CORAM : R. M. SAVANT, J.
DATE : 28th SEPTEMBER, 2016

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 30.05.2016 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By the said order, the Revision Application being No.254 of 2015 came to be dismissed and resultantly, the order dated 10.07.2015 passed under Section 78A(1)(b) of the Maharashtra Co-operative Societies Act, 1960 (For short "the MCS Act") by the Deputy Registrar of Co-operative Societies, H/West Ward, Mumbai, came to be confirmed.

3 By the order dated 10.07.2015 passed by the Deputy Registrar, the Petitioners herein who are the Secretary and Treasurer were

removed as members of the managing committee of the society as well as disqualified for a period of one term from being managing committee members from the date of their removal.

4 The challenge in the above Petition as indicated above is therefore to the said order dated 10.07.2015 and the order passed in Revision dated 30.05.2016. In so far as the said order dated 10.07.2015 is concerned, the same has been passed under Section 78A(1)(b) of the Maharashtra Co-operative Societies Act, 1960 (For short “the MCS Act”). The said provision postulates the eventualities in which such an order could be passed as also prescribes the procedure to be followed prior to passing of such an order. In so far as the Petitioners are concerned, it is their case that prior to the passing of the said order, no show-cause notice was issued to them and neither was any hearing granted to them. It is also the case of the Petitioners that the requirement in the matter of consultation with the federal society has also not been complied with before passing of the said order. In so far as the said order dated 10.07.2015 is concerned, a reading of the same discloses the grounds for passing of the said order. The grounds are inter-alia to the effect that the record of the society was not provided for inspection when the official of the Co-operative Department visited the society, that the returns have not been filed, that the documents sought by member Sanjay Khemka i.e. the

Respondent No.3 herein vide his letter dated 07.09.2014 were not provided and that the directions issued by the Co-operative Societies are not being followed. Significantly, the said order does not say anything about the compliance of the requirement as regards consultation with the federal society. In so far as the hearing to the Petitioners is concerned, it is stated that on two dates i.e. on 22.06.2015 and 30.06.2015 an opportunity of hearing was granted to the Petitioners by keeping the proceedings for hearing on the said date, but the Petitioners did not avail of the said opportunity. As indicated above, by the said order dated 10.07.2015 the Petitioners are removed as members as well as disqualified for a period of one term from being members of the managing committee.

5 In so far as the order dated 30.05.2016 is concerned, the said order has been passed by the Divisional Joint Registrar in the Revision filed by the Petitioners under Section 154 of the MCS Act. In the Revision, a specific ground has been taken as regards the requirement of consultation with the federal society as also the ground that the order dated 10.07.2015 has been passed in violation of the principles of natural justice. However, none of the grounds have been dealt with and the Divisional Joint Registrar has passed the impugned order dismissing the Revision and thereby confirming the order dated 10.07.2015 passed by

the Deputy Registrar, Co-operative Societies on the ground that the charges against the Petitioners are serious. The Divisional Joint Registrar was not only required to address the Revision Application from the perspective of the grounds raised in the Revision but also from the aspect as to whether the grounds mentioned in the order dated 10.07.2015 warrant an order of removal as well as disqualification of the Petitioners. However, the manner in which the Revision Application has been dealt with to say the least is unsatisfactory. In so far as the ground of violation of the principles of natural justice is concerned, an affidavit has been filed by the author of the said order dated 10.07.2015, to which affidavit is annexed the intimation letters dated 07.05.2015 and 25.05.2015. However the said intimations are regarding the inspection to be given to the official from the Co-operative Department and not in respect of the hearing which took place before the Deputy Registrar, Co-operative Societies.

6 A perusal of the postal acknowledgements show that they have not being signed on behalf of the Petitioners, though on one of the envelopes, it is mentioned as “unclaimed”. The fact remains that prior to the issuance of the order dated 10.07.2015, no show-cause notice was issued to the Petitioners and neither were the Petitioners heard prior to the said order dated 10.07.2015 being passed. As indicated above,

Section 78A(1)(b) of the MCS Act prescribes a procedure to be followed prior to the passing of an order under the said provision. In the facts of the present case, it would have to be held that the said procedure has not been followed. The Deputy Registrar, Co-operative Societies has also not dealt with the issue of consultation with the federal society or adjudicated upon the said proceedings from the perspective as to whether both removal and disqualification of the Petitioners was necessary in the facts of the case. The Revisionary Authority compounded the matter further by not dealing with the grounds raised in the Revision Application and as indicated above has dealt with the Revision in an unsatisfactory manner.

7 In my view, therefore, both the orders i.e. order dated 10.07.2015 as also the order dated 30.05.2016 would have to be quashed and set aside and are accordingly quashed and set aside and the matter is relegated back to the Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai for a de-novo consideration of the proceedings under Section 78A(1)(b) of the MCS Act. The Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai is directed to issue a show-cause notice to the Petitioners under Section 78A(1)(b) of the MCS Act and mention the grounds on which the said notice has been issued. The Petitioners would be given an opportunity to file a reply to the said notice. The

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Deputy Registrar thereafter by giving appropriate opportunity to the parties including the Respondent No.3 pass orders in accordance with law. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]