

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

WRIT PETITION NO.2441 OF 2016

Mr. Kishore Ahuja and anr. : Petitioners.
versus
Kakad Co-operative Housing : Respondents.
Society Ltd and ors.

Mr. Rajesh Gehani for the Petitioners
Mr. R J Mane AGP for the Respondent Nos.2 and 3.
Mr. P D Dalvi for the Respondent No.4.

CORAM : R. M. SAVANT, J.
DATE : 21st October 2016

ORAL ORDER

1 At the outset the learned counsel appearing on behalf of the Petitioners seeks deletion of the Respondent No.1 from the cause title as the Respondent No.1 is a formal party as no reliefs are claimed against the said Respondent No.1. Leave granted. Amendment to be carried out forthwith.

2 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 15/07/2016 passed by the Deputy Registrar of Co-operative Societies, H(West) Ward, Mumbai. By the said order the Petitioners herein have been removed as Managing Committee Members of the Kakad Co-operative Housing

Society Ltd.

4 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the said order has been challenged on the ground that the stand taken by the Petitioners in the replies filed them being replies dated 12/02/2016, 11/03/2016, 21/03/2016 and 12/04/2016 has not been taken into consideration by the Deputy Registrar of Co-operative Societies, H(West) Ward, Mumbai. The cause for moving the above Writ Petition before this Court without availing of the remedy under Section 154 of the Maharashtra Co-operative Societies Act was the manner in which the Authorities were proceeded with in the matter which was reflected by the fact that though the interim order dated 08/08/2016 came to be passed in the above Writ Petition staying the impugned order, the Deputy Registrar of Co-operative Societies, H(West) Ward, Mumbai though communicated with the same had for reasons best known to him passed the order appointing an Administrator. After the Contempt Petition was filed by the Petitioners herein that the statement came to be made on behalf of the said Deputy Registrar vide an affidavit filed by him to the effect that the said order appointing an Administrator would be withdrawn. In view thereof, the Contempt Petition came to be disposed of.

5 In the replies filed by the Petitioners the allegations sought to be

levied against the Petitioners have been dealt with in a detailed and elaborate manner. However, as indicated above, the said replies have not been taken into consideration and the Petitioners have been removed as Managing Committee Members of the Society in question by the impugned order. The authority exercising the powers under Sections 78 or 78A of the Maharashtra Cooperative Societies Act is required to consider the stand taken by the noticees as the orders passed under the said provisions have serious consequences inasmuch as the members stand removed as Managing Committee Members.

6 The learned counsel for the Petitioners sought to make a submission to demonstrate the motive behind passing of the impugned order as also the motive behind the manner in which the authorities have been conducting themselves.

7 In my view, it is not necessary to go into the said aspect at this stage especially when this Court is remanding the matter back to the concerned Authority for a de-novo consideration of the adjudication pursuant to the show cause notices issued to the Petitioners. The impugned order dated 15/07/2016 passed by the Deputy Registrar of Co-operative Societies, H(West) Ward, Mumbai would accordingly stand quashed and set aside and the matter is remanded back to the said Deputy Registrar for a de-novo consideration of the

proceedings initiated pursuant to the show cause notices issued under Section 78 of the Maharashtra Cooperative Societies Act. Needless to state that the Deputy Registrar of Co-operative Societies, H(West) Ward, Mumbai would be well advised to take into consideration the replies filed by the Petitioners as also hear the Petitioners and the concerned parties before passing the final order. The parties to appear before the Deputy Registrar of Co-operative Societies, H(West) Ward, Mumbai on 22/11/2016 at 3.00 pm. The Deputy Registrar of Co-operative Societies, H(West) Ward, Mumbai may thereafter fix the schedule as per his convenience. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]