

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2927 OF 1992
WITH
CIVIL APPLICATION (ST) NO. 22802 OF 2017

Panjabrao Sukhdeorao Nakhate
Since deceased, through L.Rs.

A. Latabai Panjabrao Nakhate,
Aged 58 years, Occ. Household,
R/o Shikshan Colony, Tq. Pathri
District Parbhani.

B. Prajakta d/o Panjabrao Nakhate
@ Prajakta w/o Keshav Ingole
Aged 39 years, Occ. Household
R/o Aadas, Tq. Kaij, Dist. Beed.

C. Pranjali s/o Panjabrao Nakhate
@ Pranjali w/o Vaibha Andhare
Aged 37 years, Occ. Household
R/o Jivan Jyot Hospital,
Shubh Avenue Building
Shop Nos.1 and 2, Flat No.101,
Plot No.59(C), Sector 21,
Kamathe, Tq. Panvel, District
Raigad, Navi Mumbai.410209.

D. Parag Panjabrao Nakhate,
Aged 35 years, Occ. Service,
R/o Shikshan Colony, Tq. Pathri
District Parbhani.

E. Pankaj Panjabrao Nakhate,
Aged 33 years, Occ. Advocate
R/o Shikshan Colony, Tq. Pathri
District Parbhani.

..Petitioners

Versus

1. The State of Maharashtra

2. The Joint Registrar,
Cooperative Societies,
Aurangabad.

3. The Taluka Dy. Registrar,
Cooperative Societies,
Aurangabad.

4. Jaibhawani Cooperative Housing
society Ltd. Garkheda, Aurangabad
Through its Administrator
C/o Taluka Dy. Registrar,
Cooperative Societies, Aurangabad.

5. Babasaheb Apparao Akat,
Age 30 years, Occ. Agriculture,
R/o Satona, Tq. Partur, Dist. Jalna.

..Respondents

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Advocate for Petitioner : Shri S.S. Choudhary
AGP for Respondents 1 to 3 : Shri S.K. Tambe
Respondents 4 & 5 : Absent

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 27, 2017

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ORAL JUDGMENT:

1. By this petition, the petitioner has putforth prayer clause
(B), which reads as under:-

“ (B). The order contained in the letter dated 26th April, 1991 issued by the Administrator of the respondent No.4, the order contained in the letter dated 11th February, 1991 issued by the Taluka Dy. Registrar, Co-op. Societies, Aurangabad granting approval, and the judgment and order passed by the Joint Registrar, Co-op. Societies,

Aurangabad on 6th August, 1992 in Case No.284/1991 may please be quashed by issuing Writ or Certiorari or Orders or directions or any other appropriate writ in the nature of Writ of Certiorari.”

2. Though this matter has been adjourned over the last one and half years, none has appeared for respondents 4 and 5. As such, I have considered the submissions of Shri Choudhary, learned Advocate for the petitioner and learned AGP on behalf of respondents 1 to 3.

3. Issue is as regards the cancellation of the membership of the petitioner by respondent No.4 / Society, by communication dated 26.4.1991 on the basis of a resolution passed after receiving a communication by the Deputy Registrar, Cooperative Societies, dated 11.2.1991, directing respondent No.4 to cancel the membership of the petitioner.

4. Shri Choudhary has pointed out the document dated 26.11.1983, which is a communication to the petitioner for depositing some amounts. The ownership certificate issued by the Society with regard to the Plot No.6, S. No. 62, by which, the petitioner was granted the ownership after a resolution was passed in the Annual General Body meeting on 26.1.1984 is on

record. He was thus shown to be the owner of plot No.6.

5. Subsequently, it appears that the petitioner was allotted one more plot by Shri Babasaheb Apparao Akat, who claimed to be the Chairman of the said society.

6. It is not in dispute that the membership of the petitioner has been cancelled as he has failed to pay an amount of about Rs.11,000/- to the society, though he claims to have paid the said amount to Babasaheb. The record of the society reveals that the said amount was never deposited with the society either by the petitioner or by Babasaheb.

7. Learned counsel for the petitioner has specifically raised his challenge to his expulsion on the following grounds:-

(a) Notice of hearing as contemplated under Section 35 of the Maharashtra Cooperative Societies Act and Rule 29 of the Rules of 1961, was not given to the petitioner.

(b) No opportunity of hearing in the Special General Body Meeting on the issue of expulsion was given to the petitioner.

(c) Opportunity of hearing by the Registrar of

Cooperative Societies was not given to him under Rule 29(2) of the Rules.

8. This case pertains to the year 1991. Section 35 of the Act as it stood then, prior to any amendment, reads as follows:-

“ 35. Expulsion of members.-(1) A society may, by resolution passed by a majority of not less than three-fourths of the members entitled to vote who are present at a general meeting held for the purpose expel a member for acts which are detrimental to the interest or proper working of the society:

Provided that, no resolution shall be valid, unless the member concerned is given opportunity of representing his case to the general body, and no resolution shall be effective unless it is approved by the Registrar.

(2) No member of a society who has been expelled under the foregoing sub-section shall be eligible for re-admission as a member of that society, or for admission as a member of any other society, for a period of one year from the date of such expulsion:

Provided that, the Registrar may, on an application by the society and in special circumstances, sanction the re-admission or admission, within the said period, of any such member as a member of the said society or of any other society, as the case may be.”

9. Similarly, Rule 28 and 29, prior to the amendment on 13.8.2014, reads as under:-

“28. Expulsion of Members:-Any member who has been persistently defaulting payment of his dues or has been failing to comply with the provisions of the by-laws regarding sales of his produce through the society, or other matters in connection with his dealings with the society or who, in the opinion of the committee, has brought disrepute to the society or has done other acts detrimental to the interest or proper working of the society may, in accordance with the provisions of sub-section (i) of Section 35, be expelled from the society. Expulsion from membership may involve forfeiture of shares held by the member.

29. Procedure for expulsion of members:- (1) Where any member of a society proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after

taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.

(2) When a resolution passed in accordance with sub-rule (1) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and the member concerned. The resolution shall be effective from the date of such approval.”

10. There is no dispute that after the above provisions underwent an amendment in 2014, the member sought to be expelled is required to be given an opportunity of hearing even by the Registrar before confirming the resolution passed by the Society sanctioning his expulsion.

11. Though Shri Choudhary has strenuously canvassed, on the basis of which I have formulated his three challenges in the foregoing paragraphs, that the record before the Divisional Joint Registrar, Cooperative Societies indicates that a public notice was published in Marathi Daily Lokmat on 5.3.1990 and Daily Marathwada on 8.3.1990 calling upon the members to pay the outstanding development charges. So also, a personal notice dated 10.10.1990 was served upon the petitioner calling upon

him to attend the General Body Meeting on 25.11.1990 to explain his case on the proposed expulsion. The petitioner is said to have remained absent in the said meeting. Consequentially, the resolution was passed expelling him from the membership.

12. The document placed on record dated 11.2.1991 is not a direction by the Deputy Registrar, Cooperative Societies to respondent No.4 / Society to expel the petitioner from membership, but is a communication under Rule 29(2) that the approval to the expulsion is being granted and the procedure followed by the society is in accordance with the Rules applicable and the action deserves to be approved.

13. Keeping in view that this Court is considering this matter under its supervisory jurisdiction, the findings on facts arrived at by the authorities below cannot be discarded merely because the petitioner claims that he was not given any opportunity of hearing. The findings of the authorities below, which are based on the record, clearly indicate an opportunity of hearing granted to the petitioner.

14. Considering the effect of the above factors, it appears that the petitioner was called upon to participate in the General Body

Meeting on 25.11.1990 and since he chose to remain absent, he was expelled from the membership. In the light of the same, this petition being devoid of merits is, therefore, dismissed. Rule is discharged.

15. The pending Civil Application does not survive, and it stands disposed off.

(RAVINDRA V. GHUGE, J.)

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akl/d