

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11867 OF 2015

Angad S/o Bhimrao Kadam and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri. P. R. Patil, Advocate for Petitioners.

Smt. M.A. Deshpande, Addl.G.P. for Respondents Nos. 1 to 4.

Shri. V.D. Gunale, Advocate for Intervenor.

**WITH
CIVIL APPLICATION NO. 3431/2016
IN
WRIT PETITION NO. 11867/2015**

Pralhad Harishchandra Nagime and Others.

.. Applicants

Versus

Angad Bhimrao Kadam and Others .. Respondents

Shri V. D. Gunale, Advocate for the Applicants.

Smt. M.A. Deshpande, Addl.G.P. for Respondents Nos. 1 to 4.

**WITH
CIVIL APPLICATION NO. 12402/2016
IN
WRIT PETITION NO. 11867/2015**

Angad Bhimrao Kadam and Others .. Applicants

Versus

The State of Maharashtra and Others .. Respondents

Shri. P. R. Patil, Advocate for Applicants.

Smt. M.A. Deshpande, Addl.G.P. for Respondents Nos. 1 to 4.

CORAM : S. V. GANGAPURWALA AND

K. L. WADANE, JJ.

DATE : 09th JANUARY, 2017.

PER COURT :

. We have heard Mr. Patil, the learned counsel for petitioners and the learned Additional Government Pleader.

2. Mr. Patil, the learned counsel submits that, the enquiry officer initially appointed had already completed the enquiry on 31.01.2013 and had submitted the report. Once the report is submitted by earlier Enquiry Officer, subsequent enquiry officer cannot be appointed and nor can conduct an enquiry. The learned counsel relies on the judgment of the Division Bench of this Court delivered at Nagpur in a case of Defence Project Sewakanchi Sahkari Pat Sanstha Ltd. Vs. Divisional Joint Registrar, Cooperative Societies and others reported in 2007 (9) LJ.Soft (URC) 56. The learned counsel

submits that, the appointment of subsequent enquiry officer is malafide and to protect the Directors. This aspect needs to be considered and report submitted by the earlier enquiry officer needs to be implemented.

3. The learned Additional Government Pleader submits that, the present petitioner had filed Writ Petition No. 6549 of 2014 challenging the appointment of new enquiry officer with further direction to continue the Enquiry Officer appointed by order dated 01.03.2013 for conducting the enquiry U/Sec. 88 of the Maharashtra Co-operative Societies Act. This Court disposed of said writ petition under order dated February 10, 2014 on the ground that, the petitioner has alternate remedy and liberty was given to the petitioner to avail said remedy. Now the present petition cannot be entertained. The recovery of certificate is also issued on 03rd October, 2016. The enquiry report is challenged by the present petitioner by filing appeal U/Sec. 152 of the Maharashtra Co-operative Societies Act.

4. We have considered the submissions canvassed by learned counsel for respective parties.

5. The petitioner in Writ Petition No. 6549 of 2013 had prayed for following reliefs.

- A) Call for record and proceedings of the case.
- B) Hold and declare that the impugned order dated 10.07.2013 passed by the Respondent No. 4 - District Deputy Registrar changing the Enquiry Officer and appointing the new Enquiry Officer i.e. Respondent No.5 – Assistant Registrar, Udgir is illegal, arbitrary and violative of Article 14 of the Constitution of India and therefore, same is liable to be quashed and set aside and for that purpose issue necessary orders.
- C) Issue writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus directing the Respondent Nos. 1 to 4 to continue the Enquiry Officer appointed by order dated 01/03/2013 for conducting the enquiry under Section 88 of the Maharashtra Co-operative Societies Act, 1960 and accordingly submit the report immediately and for that purpose issue necessary orders.
- D) Pending the hearing and final disposal of this Writ Petition grant stay to the impugned order dated 10/07/2013 passed by the Respondent No.4- District Deputy Registrar changing the

Enquiry Officer and appointing the new Enquiry Officer i.e. Respondent No. 5 – Assistant Registrar and for that purpose issue necessary orders.

- E) Pending the hearing and final disposal of this Writ petition allow the Enquiry Officer appointed by order dated 01/03/2013 passed by the Respondent No. 4 D.D.R. To continue with the enquiry under Section 88 of the Maharashtra Co-operative Societies Act, 1960 and submit report and for that purpose issue necessary orders.
- F) Grant ad-interim relief in terms of prayer clauses 'D' and 'E'.
- G) Pass such other further orders as this Hon'ble Court may deem, fit and proper in the peculiar facts and circumstances of the case.

6. According to the petitioner the earlier enquiry officer had completed the Enquiry on 23/01/2013 and the enquiry officer appointed on 10.07.2013 was precluded from enquiring further by the interim order passed in Writ Petition No. 6549 of 2013, as appointment was stayed. The said interim order was continued for further period of two weeks so as to enable the petitioner to file the alternate remedy. The said order is passed on February

12, 2014. All these facts existed when the earlier order was passed in the said writ petition. In view of the order passed in Writ Petition No. 6549 of 2013 dated February 10, 2014, the present petition can not be entertained. In view of the above the writ petition is disposed of. The petitioner may avail the other remedy if permissible in law.

7. In view of disposal of writ petition other civil applications stand disposed of.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]

ass/Jan. 17