

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

WRIT PETITION NO. 9303 OF 2016

Shankar s/o Shridhar Raut
age 48 years, occ. Nil
r/o Kasar Galli, Pathardi
Tq. Pathardi, Dist. Ahmednagar

.. PETITIONER

VERSUS

The Manager,
Shree Swami Samarth nagari
Sahakari Pat Sanstha Ltd., Pathardi
Tq. Pathardi, Dist. Ahmednagar

.. RESPONDENT

Mr. K.J. Suryawanshi, advocate for petitioner.
Mr. V.D. Hon, Senior Counsel instructed by Mr. A.V.Hon, advocate for respondent.

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**CORAM : S. B. SHUKRE, J.
DATE : 16th JANUARY, 2017.**

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent.
3. The legality and correctness of the order dated 08.08.2016 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai Bench at Aurangabad is in question in this writ petition.
4. By order dated 04.11.2015, an inquiry was directed to be held by the Special Auditor, Class II, Co-operative Societies (Flying Squad), Ahmednagar, into the allegations made by petitioner, who is a member of the respondent-

society, about various illegalities committed by the society in carrying on its affairs. Respondent-society, however, held meeting of the general body on 20.12.2015 to consider the propriety of the order directing enquiry, and, the general body, in this meeting, resolved that this enquiry be not continued with and it be rejected. This resolution dated 20.12.2015 was challenged by the petitioner by filing dispute being Dispute No. 11/2016 before the Co-operative Court, Ahmednagar. In this dispute, application for grant of temporary stay to the effect of the said resolution was filed by petitioner. It was opposed by the respondent-society. However, the learned Judge of the Co-operative Court was of the opinion that the resolution was prima facie passed in violation of the provisions of section 76 of the Maharashtra Co-operative Societies Act and, therefore, vide order dated 03.03.2016, granted temporary stay to the effect of the resolution dated 20.12.2015, until further order. This order was carried in appeal by the respondent-society. The appellate Court, by order dated 08.08.2016, upset the order dated 03.03.2016 passed by the Co-operative Court and vacated the stay. Not being satisfied with the same, the petitioner is before this Court.

5. Upon going through the impugned order, I find that it cannot stand the scrutiny of law. The learned Member of the appellate court has agreed with the view expressed by the co-operative Court that the resolution dated 20.12.2015 has been passed in violation of the provisions of section 76 of the Maharashtra Co-operative Societies Act. But, according to the learned Member of the appellate Court, there is another aspect which is required to be considered and it would have bearing upon the prayer made by petitioner

seeking interim stay to the resolution in question. This aspect, as reasoned by the appellate Court, is causing prejudice to the rights of the petitioner. In the opinion of the appellate Court, the decision of the general body not to hold enquiry by the Registrar is not binding upon the Registrar and, in any case, the enquiry will go on. But to say that enquiry would go on would mean that no prejudice is being caused to the rights of the petitioner, would be under-estimating the gravity of the issue. It cannot be forgotten that petitioner is the complainant in this case and the order directing initiation of enquiry specifically refers to petitioner's complaint. The complaint made by petitioner has provided basis for directing enquiry into the affairs of the respondent-society. In this background, if the society, by resolution passed in the meeting of the general body, which meeting has been prima facie held to be in violation of the provisions of law, decides that no enquiry should be held, it would certainly have the potential of being also held against the petitioner, a member of the respondent-society, who is complaining of the various illegalities committed by the society. Thus, this resolution, prima facie, causes prejudice to the rights of petitioner.

6. In the result, the impugned order is quashed and set aside and the order of the Co-operative Court, Ahmednagar, dated 03.03.2016 is confirmed. Writ petition stands disposed of. Rule made absolute in above terms.

7. It is made clear that these observations are confined to the illegality or otherwise of the impugned order in respect of the case of the petitioner

and, therefore, shall have no bearing upon the rights of the parties to be considered at the time of final disposal of the suit.

(S. B. SHUKRE)
JUDGE

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