

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

WRIT PETITION NO. 10087 OF 2016

Pachora Taluka Co-operative Education Society Ltd.,
Pachora, Tq. Pachora, Dist. Jalgaon,
through its Chairman
Shri. Sanjay Onkar Wagh,
R/o. 'Laxmi Nivas', Renuka Colony,
Ring Road, Pachora, Tq. Pachora,
Dist. Jalgaon.

Petitioners...

Versus

1. State of Maharashtra,
through Principal Secretary,
Co-operation Department,
Mantralaya, Mumbai-32.
2. Commissioner for Co-operation and
Registrar for Co-Operative Societies
Maharashtra State, Pune.

(Office of Commissioner for
Co-operation & Registrar of
Co-operative Societies,
Maharashtra State, Pune,
2nd Floor, New Administrative Building,
Pune-411 001).

3. Divisional Joint Registrar,
Co-operative Societies,
Nashik Division, Nashik.
4. District Deputy Registrar,
(Co-operative Societies),
Jalgaon Dist. Jalgaon.
5. Assistant Registrar,
(Co-operative Societies)
Pachora, Tq. Pachora,
Dist. Jalgaon.

6. Sahebrao Gajmal Patil,
Age : 74 yrs., Occu. Agri.,
R/o. Pachora, Tq. Pachora,
Dist. Jalgaon.

Respondents...

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Shri. Vijaysinh A. Thorat, Sr. Advocate i/b Shri. M. S. Deshmukh,
Advocate for the petitioner
Mrs M. A. Despande, AGP for respondents No. 1 to 5
Shri. M. M. Joshi, Advocate for respondent No.6/Intervenor
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**CORAM : R. M. BORDE &
A. M. DHAVALA, JJ.**

RESERVED ON : 01.08.2017.
PRONOUNCED ON : 15.09.2017.

JUDGMENT (PER A. M. DHAVALA, J.) :-

. By this writ petition, the petitioner-Educational Institution seeks quashing of communication dt. 19.08.2016, sent by Divisional Joint Registrar, Co-operative Societies, Nashik and directions to Commissioner for Co-operation, Co-operative Societies, Pune and Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik, the respondents No. 2 and 3 herein, to expeditiously decide the proposal for de-registration of society under the provisions of Maharashtra Co-operative Societies Act, 1960. The petitioner also seeks declaration that, its proposal for de-registration is maintainable and seeks directions to respondents No. 2 and 3 to decide it on its own merits within a stipulated time.

2. The facts relevant for deciding this writ petition may be stated as follows:-

The petitioner is a Co-operative Society registered in 1936 under the Bombay Co-operative Societies Act, 1925 and is running schools and colleges in Pachora taluka, Dist. Jalgaon. After enactment of Bombay Public Trust Act, 1950 the petitioner was also registered under the said Act in 1954. On introduction of Maharashtra Co-operative Societies Act, 1960, the petitioner was deemed to be registered under the new Act. The petitioner found it difficult to be governed by two different enactments viz. Bombay Public Trust Act as well as Maharashtra Co-operative Societies Act, simultaneously. The petitioner felt it necessary to be governed by Maharashtra Public Trust Act only. The petitioner in a meeting of Managing Committee dt. 12.03.2012, resolved to be governed by Maharashtra Public Trust Act alone and get itself de-registered under the Maharashtra Cooperative Societies Act. The petitioner on 20.04.2012 submitted a proposal for its de-registration to respondent No. 4 - District Deputy Registrar, Co-operative Societies, Jalgaon Dist. Jalgaon. Thereafter, respondent No. 4 informed the petitioner vide letter dt. 18.05.2012 that the proposal could not be considered since the issue of de-registration was under consideration of Law & Judiciary

Department. The petitioner filed Writ Petition No. 341 of 2012 in this Court and the Division Bench consisting of one of us (Justice R. M. Borde), issued directions to respondent No. 2 therein to consider and decide the application dt. 20.06.2013, presented by the petitioner, as expeditiously as possible and preferably within a period of three months. Then, on 14.08.2013, in a General Body Meeting, the petitioner-society unanimously adopted a resolution for its de-registration. The petitioner submitted written arguments of notes before respondent No. 2 on 26.08.2013 and by letter dt. 01.10.2013, respondent No. 2 - Commissioner for Co-operation, Co-Operative Societies, Maharashtra State, Pune through Additional Registrar asked respondent No. 4 to adopt appropriate procedure with regard to de-registration of petitioner-society and submit compliance report. The petitioner submitted its reply to respondent No. 4. On 16.11.2014, again a Special General Body Meeting of petitioner-society was held and an unanimous decision was taken to get the society de-registered under the Maharashtra Cooperative Societies Act and maintain its status as a public trust. A copy of the decision was submitted to respondent No.4–District Deputy Registrar on 24.11.2014. In the meanwhile, on 02.09.2014, respondent No. 4 submitted a proposal to respondent No. 3 - Divisional Joint Registrar, Nashik, in favour of de-registration of the society under newly

amended Section 21A(5) of the Maharashtra Co-operative Societies Act, 1960. By order dt. 03.03.2016, respondent No. 3 called upon respondent No. 4 to submit report on proposal for de-registration of society dt. 02.09.2014. After receipt of report dt. 30.05.2016, without giving any hearing to the parties, respondent No. 3 passed impugned order dt.19.08.2016, whereby the proposal was rejected on the ground that it was not falling within the grounds on which a Society can be de-registered as per Sections 21 & 21A of the Maharashtra Cooperative Societies Act, 1960.

3. Shri. V. A. Thorat, learned Senior Counsel for the petitioner made following submissions:

- (I) That, the proposal of the petitioner-society squarely falls within the grounds “where the work of the society is completed or exhausted” shown in Section 21A of the Maharashtra Co-operative Societies Act, 1960. The object of Co-operative Society to impart education will be continued by the petitioner as a Public Trust and there will be no adverse effect on the object of the society to be de-registered.
- (II) Under the old enactment, Maharashtra Cooperative Societies Act, 1925, there was provision under Sections 47 & 48 for de-registration of the Society but the said provision was not there in Maharashtra Cooperative Societies Act, 1960. The petitioner was deemed to be

registered under the enactment of new Act. Thereafter, said Act has been amended and the Section 21A has been introduced in 1988. The provisions of Section 21A should be interpreted with broader view to achieve the aim of introduction of such provision. There was no dispute in the management and there were unanimous decision by both the bodies of the petitioner for de-registration.

(III) As per Article 19(1)(c) of the Constitution, there is fundamental right to form association in which it is implicit right to get the association de-registered.

(IV) Mr Thorat relied on Ms. Eera Through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) & Anr. reported in 2017 SCC Online SC 787 and Kisan Vikas Ginning Pressing Ltd. Versus State of Maharashtra others reported in 2001(2) Mh.L.J. 458 with regard to interpretation of Section 21A.

4. Per contra, Shri. Joshi, learned counsel appearing for the Intervenor opposed the petition. He submitted that, he had lodged a complaint against the management and the inquiry committee has been constituted. The writ petition is pending with regard to the said inquiry. This attempt for de-registration is in order to escape from the clutches of the inquiry. He also submitted that, the proviso to Section 21A regarding the service of notice on the members of the society has not been followed. There is no necessity to de-register

the society and the grounds contemplated under Section 21A are not in existence for de-registration.

Section 21A. De-registration of societies

- (1) *If the Registrar is satisfied that any society is registered on mis-representation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, [or any primary agricultural co-operative credit society using the word 'Bank', 'Banking', 'Banker' or any other derivative of the word 'Bank' in its name,] he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society :*

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any Court merely on the ground that individual notice is not served on any such member.

- (2) *When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained in this Act or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.*
- (3) *Subject to the rules made under this Act, the Official Assignee shall realise the assets and liquidate the liabilities within a period of one year from the date he takes over the charge of property, assets, books, records, and other documents, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the total period does not exceed three years in the aggregate.*
- (4) *The Official Assignee shall be paid such remuneration and allowances as may be prescribed; and he shall not be entitled to any remuneration whatever beyond the prescribed remuneration or allowances.*
- (5) *The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any [officer below the rank of a Joint Registrar of Co-operative Societies.]*

5. After carefully considering the arguments advanced, we find that Section 21A was introduced by Maharashtra 20 of 1986 amendment in order to provide right to the societies to get themselves de-registered or even for the Registrar to de-register the societies for the reasons stated therein.

6. It cannot be disputed that the petitioner-society is presently governed by two different enactments namely; Maharashtra Cooperative Societies Act and Maharashtra Public Trust Act. The object to form the society is to provide education to the persons in the vicinity and the said object is no way going to be affected by de-registration of the society under MCS Act. The petitioner is required to fulfill the obligations and perform the duties under Maharashtra Cooperative Societies Act as well as under the Maharashtra Public Trust Act when the institution is one and the same. If the members of the society take a decision to de-register the society and opt to be governed by only Maharashtra Public Trust Act and authorities therein, the decision cannot be said to be contrary to the object of the formation of Cooperative Societies. In fact, the provisions of Maharashtra Public Trust Act can take care of the activities of the trustees and the management to see that the object of the public trust is achieved and there is proper control over the management to prevent any mismanagement.

7. In Ms. Eera Through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) & Anr. 2017 SCC Online SC 787, the doctrine of purposive interpretation has been explained and approved by quoting earlier judgments as follows:

27. *“Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.”*
28. *In any event, nowadays the shift towards purposive interpretation is not in doubt. The qualification is that the degree of liberality permitted is influenced by the context, e.g. social welfare legislation and tax statutes may have to be approached somewhat differently....”*

8. In Abhiram Singh v. C. D. Commachen 2017(2) SCC

629. The above precision of purposive interpretation is approvingly quoted as follows:

“The submission is that the purposive interpretation has become the elan vital of statutory interpretation because of progressive social climate and Judges' statesmanship. Krishna Iyer, J., in his inimitable style, had said “when legislative purpose or intention is lost, then the process of interpretation is like to adorn the skin, and to miss the soul”. A court has to be progressive in its thought and should follow the path of construction that comprehensively meets the legislative intention. If a Judge gets stuck with the idea that construction is the safest, the enactment is not fructified, the purpose is missed and the soul is dismissed. A narrow construction of a concept invites a hazard whereas a broad exposition enlarges the sweep and achieves the statutory purpose. These are certain abstractions. It will apply in a different manner in different statutes, like tax law, penal law, social welfare legislation, excise law, election law, etc. That apart, the law intends to remedy a mischief. It also sets

goal and has a remedial intent. It also states certain things which clearly mean what has been said. In that case, there is no room for the Judge and solely because he is a constructionist Judge, cannot possess such tool to fly in the realm of fanciful area and confer a different meaning. His ability to create in the name of judicial statesmanship is not limitless.

32. In *State of Himachal Pradesh v. Kailash Chand Mahajan*, it is observed that “the distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment.”

33. After reproducing the same, the Court observed that there is a great distinction between the two. While the object of the legislation is to provide a remedy for the malady, on the contrary, the legislative intention relates to the meaning from the exposition of the remedy as enacted. The Court further ruled that for determining the purpose of legislation, it is permissible to look into the circumstances which were prevalent at that time when the law was enacted and which necessitated the passing of that enactment and for the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is open to the court to look into the 'Statement of Objects and Reasons' of the Bill which accentuated the statement to provide a remedy for the then existing malady.

9. In *Kissan Vikas Ginning Pressing Ltd. Versus State of Maharashtra & Others* reported in 2001 2 Mh.L.J. 458, the members of Cooperative Society passed a resolution to convert itself to a public limited company. Hon'ble Justice S. A. Bobde, as a Judge of this Court (as he then was), observed in the said case as under :

“the existence of a Co-operative Society can come to an end either by cancellation of its registration under Section 21 or its registration under Section 21-A of the Act. The other mode, which seems appropriate in this case, is by liquidation. Provisions under section 77-A of the Maharashtra

Cooperative Societies Act, for appointment of an Administrator to carry on the function of the Society cannot be brought into play where the Society has ceased to function as a Society as a result of its own decision. Such a situation would attract the provisions of Section 102 of the Maharashtra Cooperative Societies Act, 1960 which provides for liquidation”.

10. In case of a Society, the will of majority of the members of Society is supreme. If they decide to get themselves not to be governed by the Maharashtra Cooperative Societies Act and to be governed only by provisions of Maharashtra Public Trust Act, there is nothing wrong. The decision deserves to be respected subject to verification of the facts and following the due procedure.

11. We are of the view that, the present case certainly falls under Section 21A in general and under the words “Where the work of Society is completed or exhausted” in particular as the Institute is now governed by Maharashtra Public Trust Act. We, therefore, do not agree with the view taken by respondent No. 3-Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik in its order dt. 19.08.2016. We hold that, the respondents were bound to consider the proposal of the petitioner for de-registration of the Society under Section 21A of the Maharashtra Cooperative Societies Act, 1960, subject to following necessary procedure and verification of the facts.

12. The Intervenor has taken objection as follows:

- (i) There were complaints against the office bearers of the Management of the petitioner-Society and the inquiry was going on against them. We find that the said inquiry can be continued even after de-registration of the petitioner-Society and this cannot come in the way when majority members of the Society are desirous to get the Society de-registered.
- (ii) It is also argued that the provisions of Section 21A regarding service of notice on members of the Society was not followed and there was no necessity to de-register the society.

13. We find that, it is for the respondent to take appropriate decision in the light of Section 21A of the Maharashtra Cooperative Societies Act, 1960 on the proposal submitted by the petitioner. While taking such decision, the respondents shall follow the procedure contemplated under the Act and shall also verify the factual aspects if there are any doubts about the correctness thereof. If necessary, the respondents can send their representative for verifying the wishes of the members by attending Annual or Special General Body Meeting.

14. It is also to be noted that, the petitioner will have to pass appropriate resolution for transferring the reserve funds of the Society to the public trust and also to transfer the personal interest of the members of the society to the public trust. They will have to seek permission of the Registrar in this regard.

15. These are all points which can be taken care of by the Registrar while considering the proposal of the petitioner for de-registration u/s 21A of the Maharashtra Cooperative Societies Act.

16. We are, therefore, inclined to allow the petition. Hence the following order.

ORDER

[I] The Writ Petition is allowed.

[II] The order passed by respondent No. 3 – Divisional Joint Registrar, Nashik Division, Nashik dt. 19.08.2016 thereby holding that the proposal of the petitioner for de-registration of the society is not covered u/s 21 or 21A of the Maharashtra Cooperative Societies Act, 1960, is set aside and it is declared that the proposal of the petitioner for de-registration of the Society squarely falls under Section 21 and 21A of the Maharashtra Cooperative Societies Act, 1960.

- [III] The respondents are directed to reconsider the proposal dt. 20.04.2012 of the petitioner for de-registration of the Society under Maharashtra Cooperative Societies Act, 1960.
- [IV] The petitioner has to take permission of the Registrar with regard to transfer of reserve funds and transfer of interest of members in the Society to the Public trust after passing resolution to that effect.
- [V] The respondents are at liberty to verify the factual aspects of following the proper procedure and ascertain the opinion of the majority, if necessary, by appointing a representative to attend the Special General Body Meeting.
- [VI] The members of the Society are at liberty to raise their objections with regard to de-registration, it will be duly considered by the respondents.
- [VII] It is clarified that, if any inquiry is pending against the members of the management-Committee, those shall be continued even after the de-registration of the Society.
- [VIII] It is directed that the petitioner shall comply with all the formalities on their part within a period of four weeks from today for the purpose of their proposal for de-registration and thereafter the respondents shall take the decision thereon as expeditiously as possible within a

period of four months from the date of receipt of the proposal.

17. Rule is made absolute in the above terms. There shall be no order as to costs.

[A. M. DHAVALE]
JUDGE

[R. M. BORDE]
JUDGE

sgp