

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4298 OF 2017

Shivaji Pansare and others	...	Petitioners
Vs.		
Maresh Gada and others	...	Respondent

Mr. P. D. Dalvi for Petitioners.
Mr. Amol Kharat a/w. Mr. Kundlik Pachangave i/b. Pillai & co. for Respondents No.1 to 4.
Ms Vaishali Nimbalkar, AGP for Respondents No.9 to 11-State.

CORAM : R. G. KETKAR, J.
DATE : APRIL 21, 2017

P.C. :

Heard Mr. Dalvi, learned Counsel for petitioners, Mr. Kharat, learned Counsel for respondents No.1 to 4 and Ms Nimbalkar, learned AGP for respondents No.9 to 11-State at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 01.04.2017 passed by the respondent No.10, Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By that order, respondent No.10 stayed the order dated 10.03.2017 passed by the respondent No.9, Assistant Registrar, Co-operative Societies, F/S-Ward, Mumbai under Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'), till next date of hearing.

3. In support of this Petition, Mr. Dalvi submitted that respondent No.4 is Industrial Premises Co-operative Society. He submitted that in exercise of powers conferred by Section 3 of the Act, by notification dated 04.09.1980, Government of Maharashtra has conferred on the Joint Registrar of Co-operative Societies (Industrial Co-operative Estate) in the Directorate of Industries, Bombay, all the powers of the

Registrar under the Act and the Maharashtra Co-operative Societies Rules, 1961 (for short 'Rules'), not being the powers under Sections 81 and Rule 69. He submitted that respondents No.1 to 3 have instituted Revision Application before the Divisional Joint Registrar, Co-operative Societies. In view of the Notification issued by the State Government on 04.09.1980, Divisional Joint Registrar has no authority and / or power to entertain and decide the revision application. He also relied upon Rule 10 of the Rules.

4. Mr. Dalvi invited my attention to the order dated 10.03.2017 passed by the respondent No.9, Assistant Registrar. Assistant Registrar considered the say filed by the respondent No.4 society to the effect that in the financial year 2014-2015, Annual General Meeting could not be conducted on account of unavoidable circumstances. In view thereof, for the financial years 2014-2015 and 2015-2016, annual general meeting was held on 28.12.2016. He submitted that as there is admission on the part of the society about not holding meeting in the financial year 2014-2015 and that for two financial years, only one meeting was held on 28.12.2016, stay deserves to be vacated. In any case, respondents No.1 to 3 may be restrained from taking any major policy decisions pending the revision application.

5. On the other hand, Ms Nimbalkar and Mr. Kharat supported the impugned order. It is submitted that respondent No.10 has given reasons for staying the order passed by the Assistant Registrar, and therefore, no case is made out for interfering with the impugned order. It is submitted that if the stay is vacated, the revision application filed by the respondents No.1 to 3 will be rendered infructuous. It is further submitted that in case of emergency, liberty may be reserved to respondents No.1 to 3 to seek leave from the Divisional Joint Registrar. Ms Nimbalkar submitted that respondent No.1 will decide the revision

application within two months from the production of the authenticated copy of the order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Mr. Dalvi submitted that in view of the Gazetted Notification dated 04.09.1980 issued by the Government in exercise of powers under Section 3 of the Act, Divisional Joint Registrar has no power to entertain and decide the Revision Application. He also relied upon Rule 10 of the Rules. In my opinion, it will be permissible to the petitioners to raise this contention before the Divisional Joint Registrar. As the revision application is pending before the Divisional Joint Registrar and in view of the order, which I propose to make, I do not deem it appropriate to deal with this contention lest the Divisional Joint Registrar will be influenced by the findings recorded herein.

7. As far as the stay granted by the Divisional Joint Registrar is concerned, in my opinion, no case is made out for interfering with that order, otherwise the revision application will be rendered infructuous. Respondents No.1 to 3 are at liberty to seek leave of Divisional Joint Registrar in case of emergency. At the same time, respondents No.1 to 3 are prohibited from taking any major policy decisions. Mr. Kharat submitted that Deputy Registrar has also initiated inquiry against the petitioners under Section 83 of the Act. It is clarified that this Court has not stayed or prohibited respondents from proceeding with the inquiry or initiating the inquiry in accordance with law. Respondent No.10 is requested to dispose of the revision application within two months from the production of the authenticated copy of this order. All contentions of the parties are expressly kept open. Petition is disposed of in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)