

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4451 OF 2017

Prakash M. Shah
And Ors.

...Petitioners

Versus

The Divisional Joint Registrar Co-operative
Societies And Ors.

...Respondents

....
Mr.G.S. Hegde a/w. Pinky M. Bhansali, Advocate for the
Petitioners.

Ms. Vaishali Nimbalkar, A.G.P. for respondents No.1 to 3.

Mr.Vijay Patil a/w. Manoj Patil, Advocate for respondent No.4.

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CORAM : R. G. KETKAR, J.

DATE : 21st APRIL, 2017

P.C.

1. Heard Mr.G.S. Hegde, learned counsel for the petitioners, Ms. Vaishali Nimbalkar, learned A.G.P. for respondents No.1 to 3 and Mr.Vijay Patil, learned counsel for respondent No.4, at length.

2. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 31.3.2017 passed by respondent No.1 Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai in Revision Application No.244/2015. By that order, respondent No.1 allowed the Revision Application and set aside the judgment and order dated 10.7.2015 passed by Deputy Registrar, Co-operative Societies, H-West Ward, Mumbai. By that order, Deputy Registrar in exercise of powers under Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') removed (1) Ms. Bina Choudhary, Chairman, (2) respondent No.4 Ali Imam Hossain, Secretary, (3) respondent No.5 Mr.Ketan Sheth, Treasurer, as member of the Managing Committee and further for a period of five years from being elected as a member of the Managing Committee. By the impugned order, the Divisional Joint Registrar has set aside said order.

4. It appears that earlier Writ Petitions were instituted in this Court challenging the order dated 6.11.2015 passed by respondent No.1. Said Revision was filed challenging the order dated 10.7.2015 passed by the Deputy Registrar. Revision Application was dismissed by the Divisional Joint Registrar. After

hearing both sides, this Court allowed the Writ Petition. This Court also appointed Administrator to administer the society. This Court set aside the order dated 6.11.2015 passed by the Divisional Joint Registrar and remitted Revision Application for deciding it afresh. Administrator was ordered to continue to function till the Revision Application is decided. It appears that aggrieved by this decision, the matter was carried to the Apex Court challenging appointment of Administrator and said S.L.P. was dismissed. After remand, by order dated 31.1.2017, respondent No.1 allowed Revision Application and set aside the order dated 10.7.2015 passed by the Deputy Registrar. Aggrieved by that decision, Writ Petition (St.) No.4859/2017 was instituted in this Court. By order dated 20.2.2017, this Court once again set aside the order passed by respondent No.1 and remitted the matter to Divisional Joint Registrar. Administrator appointed earlier and who was in-charge of the society was ordered to continue during pendency of the Revision Application and for a period of one week thereafter. It is after the remand, by the impugned order dated 31.3.2017 Divisional Joint Registrar has again allowed Revision Application and set aside the order dated 10.7.2015 passed by the Deputy Registrar.

5. A perusal of the impugned order shows that the Divisional Joint Registrar observed that in the earlier part of the order the Deputy Registrar has noted some deficiencies in the reply filed by the applicant before him and also noted some non-compliance in respect of annual report, audit rectification report and appointment of auditor. Deputy Registrar thereafter observed that in view of various deficiencies noted in the reply filed by the applicants before him, there is doubt whether the Annual General Meeting for the year 2013-14 was held or not. Deputy Registrar thereafter considered the fact of eight members filed notarized affidavits stating therein that the proceedings of AGM are fabricated. Deputy Registrar, therefore, held that the Annual General Meeting was not held. Respondent No.1 observed that Deputy Registrar has recorded contradictory finding. In my opinion, once respondent No.1 recorded finding to the effect that Deputy Registrar has recorded contradictory findings, he should have remitted the matter for deciding it afresh instead of allowing Revision Application, in exercise of powers under Section 154 of the Act.

6. During the course of hearing, I suggested learned Counsel appearing for the parties that I will set aside both the

orders and remit the matter to Deputy Registrar, Co-operative Societies, H-West Ward, Mumbai. Upon taking instructions from their respective clients, learned Counsel appearing for the parties are agreeable to the suggestion made by the Court.

7. Learned Counsel appearing for the parties state that they will appear before the Deputy Registrar on 27.4.2017 at 4:00 p.m. and for that purpose no fresh notice be issued to them.

8. Ms. Nimbalkar states that Mr.S.M. Karale, Co-operative Officer is present in the Court. Upon taking instructions from him, she states that within two months from the date of appearance of the parties, Deputy Registrar will decide the proceedings under Section 75 of the Act.

9. In view thereof, the Petition is disposed of in the following terms :

- (i) Order dated 10.7.2015 passed by the Deputy Registrar, Co-operative Societies, H-West ward as also the order dated 31.3.2017 passed by the Divisional Joint Registrar in Revision Application No.244/2015 are quashed and set aside. Revision Application No.244/2015 stands disposed of.

- (ii) The parties shall appear before the Deputy Registrar on 27.4.2017 at 4:00 p.m. and for that purpose no fresh notice be issued to them.
- (iii) Deputy Registrar is requested to decide the proceedings as expeditiously as possible and preferably within two months from the date of appearance of the parties.
- (iv) All contentions of the parties are expressly kept open.
- (v) As Administrator was appointed by order dated 29.11.2016 and was thereafter continued by order dated 20.2.2017, during pendency of proceedings before the Deputy Registrar and for a period of two weeks thereafter, Administrator shall continue on the society.
- (vi) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)