

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3216 OF 1995**

Vidyachandra Manilal Desai
Adult, Occupation : Business
Residing at 141/A, Shukrawar Peth,
Shinde Ali, Pune. PETITIONER

V E R S U S

1. Tiny Cooperative Industrial Estate
having its office at 39, Shankarsheth
Road, Pune.
2. Mr. R. B. Bendigiri
Deputy Registrar, Co-operative Societies,
Pune (4), Pune.
3. The Joint Registrar
Co-operative Societies (Appeal)
Pune Division, Pune. RESPONDENTS

APPEARANCE :

Mr. S. S. Kanetkar a/w V. H. Narvekar for Petitioner.
Mr. S. H. Kankal, AGP for Respondent Nos. 2 and 3.

**CORAM : K. K. TATED, J.
DATE : JULY 21, 2017.**

JUDGMENT

. Heard learned Counsel Mr. Kanetkar for Petitioner.
Though the Respondent No.1 – Society duly served, no one
appeared on behalf of them when the matter called out.

2. By this petition under Article 227 of the Constitution of India Petitioner is challenging the order dated 2nd June, 1995 passed by the Joint Registrar Co-operative Societies (Appeal), Pune Division, Pune in Appeal No. 62 of 1994-95 by which the Appellate Authority had set aside the order dated 20th October, 1994 passed by the Deputy Registrar Co-operative Societies, Pune City (4), Pune and granted approval to the expulsion resolution passed by the Society against the Petitioner.

3. The Appellate Authority approved the resolution passed by the Respondent No.1-Society for expulsion of Petitioner.

4. The learned Counsel for Petitioner placed on record photo copy of letter dated 20th November, 1990, 20th December, 1990, 14th January, 1991, 14th February, 1991, Judgment dated 19th April, 2004 passed by the Cooperative Court No.2, Pune in Dispute No. 154 of 1991 and copy of plaint in Special Civil Suit No. 576 of 1991 filed by the Respondent No.1-Society before the Civil Judge, Senior Division, Pune for a claim of Rs. 5,00,000/-on the ground of defamation.

5. The Respondent No.1-Society is registered under the Maharashtra Co-operative Societies Act, 1960. There was correspondence between Petitioner and Respondent No.1-Society. It was the case of Respondent No.1 that Petitioner written those letters making allegations against the Society as well as the Management Committee. Same amounts to detrimental to the interest and proper working of the Society.

6. Thereafter the Managing Committee of Respondent No.1-Society passed resolution dated 23rd June, 1992 for expulsion of Petitioner from Respondent No.1-Society and matter was referred to the general body meeting. The general body meeting by resolution dated 14th October, 1992, by majority passed the resolution to expel the Petitioner from Respondent No.1 - Society.

7. Thereafter the Respondent No.1 - Society filed Application under Section 35 of the Maharashtra Co-operative Societies Act, 1960 for approval of resolution passed by the general body on 14th October, 1992.

8. The Deputy Registrar, Cooperative Societies, Pune by order dated 20th October, 1994 rejected Respondent No.1's Application under Section 35 of the said Act for approval of general body resolution dated 14th October 1992 for expelling the Petitioner as a member of Respondent No.1 - Society.

9. Being aggrieved by the order of Deputy Registrar, Cooperative Societies, Pune, Respondent No.1 - Society preferred Appeal No. 62 of 1994 to the Divisional Joint Registrar, Co-operative Societies Pune at Pune under Section 152 of the said Act.

10. The Divisional Joint Registrar after considering evidence on record and several letters written by the Petitioner to the Society held that Respondent No.1 - Society has made out the case for allowing their Appeal.

11. The Divisional Joint Registrar, Pune by its impugned order dated 2nd June, 1995 set aside the order passed by the Deputy Registrar, Cooperative Societies dated 20th October, 1994 and approved the general body resolution dated 14th October, 1992. Hence, the present writ petition.

12. The learned Counsel Mr. Kanetkar appearing on behalf of Petitioner submit that the impugned order passed by the Divisional Joint Registrar, Cooperative Societies, Pune dated 2nd June, 1995 is against the justice to prudent conscious and same is liable to be set aside.

13. The learned Counsel for Petitioner submit that as per Section 35 of the said Act, resolution can be approved by the Authority in case the act of the member is detrimental to the interest or proper working of the Society. He submit that bare reading of the letters written by the Petitioner to Respondent No.1 - Society shows that those letters were written by the Petitioner to protect his interest in the Society.

14. The learned Counsel for Petitioner submit that the Respondent No.1 - Society with malafide intention to decline allotment of plots to the Petitioner as per his seniority passed such resolution. He submit that letters dated 20th November, 1990, 20th December, 1990 and 15th November, 1991 shows that Petitioner placed on record true facts to justify his case. He submit that those letters clearly shows that not a single word amounts to detrimental

to the interest of the Society and/or to affect the working of the Society. He submit that the learned Divisional Joint Registrar without considering in detail those letters, passed the impugned order dated 2nd June, 1995. Hence, the order passed by the Appellate Authority dated 2nd June, 1995 is required to be set aside.

15. The learned Counsel for Petitioner submit that as per Rule 29 of the Maharashtra Co-operative Societies Rule, 1961 made it mandatory that for passing the resolution of expulsion of a member, Society has to give one month's clear notice to that effect. Rule 29 read thus :

“29. Procedure of expulsion of members :-

(1) Where any member of a society proposes to bring resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the Society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general body meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting, to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to

the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.

(2) When a resolution passed in accordance with sub-rule (1) is sent to the Registrar [along with application, the Registrar may consider the resolution and after due inquiry and giving reasonable opportunity of being heard to such member give his decision within ninety days from the date of receipt of application and communicate the same to the society and the member concerned.] The resolution shall be effective from the date of such approval.”

16. The learned Counsel for Petitioner submit that in the present proceedings Respondent No.1 - Society issued notice dated 29th September, 1992 calling the general body meeting to consider the resolution passed by the Managing Committee dated 23rd June, 1992 to take action against the Petitioner for expelling him from the Society. He submit that thereafter the general body meeting of Respondent No.1-Society was held on 14th October, 1992 and the resolution was passed against the Petitioner. He submit that this incident shows that Respondent No.1 - Society without following the mandatory procedure as prescribed under Section 29 of the

Rules passed the resolution within one month from the date of notice of general body meeting.

17. In support of this contention, learned Counsel for Petitioner relies on the Judgment of this Court in the matter of ***Narayan and etc. etc. ..Vs.. Asstt. Registrar, Co-operative Societies, Yavatmal and others, reported in AIR 1994 Bombay, 239.*** In that authority it is held that for non-compliance of provisions of Rule 29 which is mandatory, expulsion of member vitiates. Paragraph Nos. 3 and 4 of the said Judgment read thus :

“Shri Deshpande, learned Counsel appearing for the petitioners in all the three petitions urged that both the orders are totally erroneous in law, inasmuch as both the authorities have ignored the mandatory provisions of S. 35(1) of the Maharashtra Co-operative Societies Act, and Rules 28 and of the Maharashtra Co-operative Societies Rules. According to Mr. Deshpande, firstly the mandatory notice which was required to be served individually, has not at all been served on any of the petitioners. He further contended that even if the notice is taken to have been served on the members, there is specific breach of Rule 29, inasmuch as the said meeting for expulsion could not have been taken place before one month of the service of that notice. Rule 29 of the

Maharashtra Co-operative Societies Rules, reads as under :-

“29. Procedure of expulsion of members

:-

(1) Where any member of a society proposes to bring resolution for expulsion of any other member, he shall give a written notice thereof, to the Chairman of the Society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the members against whom such resolution proposed to be brought, calling upon him to be present at the general meeting to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.”

The language of Rule 29 thus is very clear that where the society proposes to expel a member from the membership, not only that the member shall be individually served

with a notice, which would contain an agenda of the said proposed general body meeting but the said meeting has to be held not earlier than a period of one month from the date of such notice. In the present case admittedly the notice is dated 4-1-1986. Meeting has been held on 1-2-1986 i.e. within a period of one month. The language of Rule 29 is mandatory and as such the meeting in which the resolution of expulsion of these members was passed is itself rendered illegal. The Assistant Registrar, who granted approved of this expulsion was bound under Section 35 of the Maharashtra Co-operative Societies Act to consider this aspect as the said approval by the Registrar provided in Section 25(1) of the Act is not an empty formality. The Registrar, who was approached by the society for the approval of the resolution, has to examine all legal aspects with open eyes. He cannot depend only upon the submissions made to him by the parties. I have seen the order of the Assistant Registrar, which is completely silent on this aspect. It is significant to note that in the appeal memos this point was specifically raised by all the three petitioners. It was pointed out that the mandatory notice firstly was never served and secondly the

meeting itself was an illegal meeting having been held before the period of one month being elapsed after the notice was given. The Divisional Joint Registrar has merely referred to this point but has not bothered to consider the importance of the matter. He has merely stated that such point was not raised before the Assistant Registrar. Whether such point was raised before the Assistant Registrar or not, the impact of this legal submission was bound to be considered by the Divisional Registrar particularly because the provision of Rule 29 is a mandatory provision. Similar such controversy came up before this Court in writ Petition No. 2601/1990, decided on 20-11-1990 (M.S.Deshpande, J.) wherein this Court has taken the view that Rule 29 is of a mandatory nature and non-compliance with the same will make the resolution illegal. The decision being of co-ordinate bench of this Court is binding on me. The provisions being a mandatory provision, merely because the question was not raised before the Assistant Registrar, it would not absolve the authority simply saying that the mandatory provisions of law were complied with by the society before the expulsion resolution were passed.

4. *Both the authorities thus have erred in law in according approval to the resolution which has been passed in a meeting which itself was illegally held. The impugned orders are, therefore, liable to be set aside.”*

18. The learned Counsel for Petitioner also relies on the Judgment in the matter of ***Vishwajit Co-operative Housing Society ..Vs.. P. P. Damle, reported in 1975 Vol. LXXVII Bombay Law Reporter 615***. He submit that in this authority also the Divisional Bench of this Court held that procedure prescribed in Rule 29 of the said Rules is mandatory. He relies on following portion of the said Judgment which read thus :

“ *In other words, there can be no approval of any matter unless the person giving approval has full knowledge of the thing which he is required to approve of. It is also needless to say that when one of the parties to a bargain writes “approved” at the end of the draft of the agreement and adds his signature, he thereby makes the draft a binding contract, and does not merely express approval of its form after the manner of conveyancers. That being the position, when the Registrar is expected to give approval to a resolution passed by a society under s. 35(1) of the Act, surely he is not only simply to look at the formalities but also to*

consider the merits of the case against the member sought to be removed under the resolution passed by the Society.

This view is reinforced by sub-rule (2) of Rule 29 of the rules. We have already pointed out that according to this sub-rule, “the Registrar may consider the resolution and after making such inquiries, as he may deem fit, give his approval...”. In other words, the Registrar is to consider the resolution on merits and before he may give his approval, he is also required to make such inquiries as he may deem fit. In our opinion, sub-rule (2) of rule 29 makes it obligatory on the Registrar to make such inquiries as he may deem fit consider the resolution and then he is to decide whether he may or may not give his approval to the resolution. Surely, if the Registrar was required only to find out whether the formalities were observed by the society before passing the resolution, it is difficult to understand why the Legislature has deemed it proper to make it obligatory on the Registrar first to make inquiries as he deems fit, consider the resolution and then to decide whether he should give his approval or not. Surely, an authority to which power is given to approve some proposal

has certainly the power to say that it will not approve the proposal at all, for the words “may give approval” used in sub-rule (2) of Rule 29, on a reasonable interpretation, include “may not give approval”. The Registrar in such cases can decide the question of approval, therefore, only after making his own inquiries in a manner he deems fit, consider the resolution on merits and thereafter give approval or withhold it. That being the position, we are unable to accept the contention of the learned counsel Mr. Apte that under s. 35(1) of the Act read with Rule 29 of the Rules, all that the Registrar is expected to do is only to find out whether formalities are complied with and if he ultimately comes to the conclusion that all the necessary formalities are gone through by the Society, he must necessarily give his approval, whether or not the case on merits may be such in which the member concerned does not deserve the punishment sought to be imposed on him by the Society by removing him from the roll of the members.

The learned counsel has then submitted that in all such case, a Society is in a position to know and decide whether or not a particular member should be removed and once

the Society by a majority which is three-fourth for the removal of a member, decides to remove him, it would be improper to authorise either the Registrar or the revising authority to sit in judgment upon the decision of a Society, which decision in every such case is arrived at by a society by following a democratic procedure laid down by the Act. We much remember here that even after an approval is given by the Registrar, an appeal is provided against the order of approval under s. 152 of the Act and a revision under s.154 of the Act. These are, therefore, checks against any frivolous decision or high-handed action taken by a Society. If that is so, we are unable to understand how it is possible to say that these checks are provided for under the Act only to find out whether the formalities are observed by the Society in passing a particular resolution. If such an argument is accepted, all that it is necessary to do for a Society to remove an inconvenient member is to pas a resolution by three-fourth majority after observing all the formalities, and obtain mechanical approval from the Registrar. In that event, it would be very difficult for any member in a Society to criticize freely action of Managing Committee or even the proposals of a

Society sought to be moved in a meeting of the General Body. Could it be, therefore, the intention of the Legislature while enacting s. 35(1) of the Act and Rule 29(2) of the Rules in making provisions for the approval of the Registrar, that the Registrar only should see whether or not the Society has complied with all formalities and not to go into the merits of a particular case against a member sought to be removed by the Society? In fact, we do not think that if it was merely a question of observing formalities, it was necessary to provide first a remedy of appeal under s. 152 and then again a revision under s. 154 of the Act. We have, therefore, no hesitation in holding that the powers of the Registrar in giving approval to a resolution passed by the Society under s. 35(1) of the Act read with Rule 29(2) of the Rules extend to going into the merits of a case after making inquiries as he may deem fit in the case. The powers conferred on the Registrar for giving approval to such a resolution are not confined only to seeing whether or not the Society has observed the necessary formalities.”

19. The learned Counsel for Petitioner submit that in a case in hand notes of general body meeting was issued on 29th September, 1992 and the resolution was passed before expiry of mandatory one month period i.e. resolution was passed on 14th October, 1992. Hence, in view of the Judgment in the matter of *Narayan and etc. cited (supra)* and *Vishwajit Co-operative Society cited (supra)* the impugned order passed by the Divisional Joint Registrar, Co-operative Societies, Pune dated 2nd June, 1995 is required to be set aside.

20. The learned Counsel for Petitioner submit that the Petitioner filed Dispute No. 154 of 1991 before the Co-operative Court No.2, Pune for setting aside the resolution passed by the Managing Committee of Respondent No. 1 - Society on 16th September, 1990. He submit that the Co-operative Court by its Judgment dated 19th April, 2004 in Dispute No. 154 of 1991 set aside the resolution passed by the Managing Committee of Respondent No.1. The operative part of the said Judgment dated 19th April, 2004 read thus :

“ORDER

1. *It is hereby declared that the resolution passed by Managing Committee of opponent society on 16/9/90 vacating claim of disputant to get plot is illegal, null and void and has no effect. Accordingly society had no right to interfere in the priority right of the disputant and demote his name from the priority list.*

2. *The opponent society is hereby ordered and directed to publish name of the disputant at same serial number and add the same in the priority list which was appeared before 30/10/90 and to allot him 1 plot as per said priority list mentioned before 30/10/90.*

3. *The opponent society shall pay Rs. 750/- to the disputant towards cost and expenses of the dispute and shall bear its own costs.*

4. *An award be drawn accordingly.”*

21. The learned Counsel for Petitioner submit that Respondent No.1 - Society also filed Special Civil Suit No. 576 of 1991 in the Court of Civil Judge, Senior Division at Pune being a suit for defamation and claimed compensation of Rs. 5,00,000/- with following prayers :-

“PRAYERS :

(a) *A Judgment and decree for Rs. 5,00,000/- (Rupees Five Lakhs only) please be passed against the Defendant No.1.*

(b) *The said amounts please be recovered from Defendant No.1 and paid to the Plaintiff with costs;*

(c) All other just and proper orders in favour of the Plaintiff please be passed.”

22. The learned Counsel for Petitioner submit that the said suit stand dismissed by order dated 20th September, 2002 as the Respondent No.1-Society failed and neglected to prosecute the same. He submit that the said suit was filed by the Respondent No.1 – Society on the basis of same letters written by the Petitioner to the Society. As per the Society, Petitioner made allegations against the Society as well as Managing Committee members. He submit that dismissal of the Special Civil Suit No. 576 of 1991 itself shows that the contention and grounds raised by the Society for expulsion of Petitioner from Society is not maintainable.

23. On the basis of these submissions, the learned Counsel Mr. Kanetkar appearing on behalf of Petitioner submit that the impugned order passed by the Divisional Joint Registrar, Co-operative Societies, Pune dated 2nd June, 1995 is required to be set aside.

24. I heard learned Counsel for parties at length, also perused the letters placed on record by the Petitioner, copy of Judgment dated 19th April, 2004 passed by the Co-operative Court, Pune in Dispute No. 154 of 1991 and the copy of plaint in Special Civil Suit No. 576 of 1991 filed by the Respondent No.1 - Society in the Court of Civil Judge, Senior Division at Pune.

25. It is to be noted that as per Rule 29 of the said Rules, it is mandatory on the society to give one month clear notice to the

member against whom they want to pass resolution in the general body meeting for expulsion. In the present proceeding Respondent No.1 - Society issued notice dated 29th September, 1992 for calling the general body meeting to discuss the resolution passed by the Managing Committee dated 23rd June, 1992. General body meeting passed the resolution on 14th October, 1992 i.e. before expiry of one month. As the society passed the resolution defying the mandatory provisions as contemplated under Rule 29 of the said rules and those facts were not considered by the Divisional Joint Registrar, Co-operative Societies in its impugned order dated 2nd June, 1995, same is required to be set aside.

26. Bare reading of the letter dated 20th November, 1990, 20th December, 1990 and 14th February, 1991 shows that Petitioner written those letters to Respondent No.1 – Society just to protect his interest. Bare reading of those letters shows that Petitioner has not made any allegations against Respondent No.1 - Society and/or the committee members. Therefore, those letters cannot be termed as detrimental in the interest of the Society. These facts were not considered properly by the Appellate Authority by its order dated 2nd June, 1995. On this count also the order passed by the Appellate Authority is required to be set aside.

27. Apart from these facts, the suit filed by the Respondent No.1 - Society against the Petitioner being Special Civil Suit No. 576 of 1991 for compensation of Rs. 5,00,000/- which stand dismissed by order dated 30th September, 2002 itself shows that Respondent No.1 failed to prove their case against the Petitioner as per Section 35 of

the said Act. On this count also the impugned order passed by the Appellate Authority is required to be set aside.

28. In view of above mentioned facts and the authorities cited by the learned Counsel for Petitioner, Petition filed by the Petitioner is required to be allowed. Hence, the following order.

ORDER

(a) Impugned Judgment dated 2nd June, 1995 passed by the Joint Registrar, Co-operative Societies (Appeal), Pune Division, Pune in Appeal No. 62 of 1994-95 is set aside.

(b) The Respondent No.1 - Society to pay the costs of Rs. 5000/- to the Petitioner.

(K.K.TATED, J.)