

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7333 OF 2017

Golden ISLE SRA CHSL. ...Petitioner.

v.

Div. Joint Registrar of Co-op.
Societies and ors. ...Respondents.

Mr. S.L.Kapse with Mr., Upendra Mahadik i/by Fast Track
Legal for the petitioner.

Mr. Milind More for Respondent Nos. 1 and 2.

Mr. S.H.Kankal, AGP. for the State.

Mr. Chaitanya Bhandarkar for Respondent No.4.

CORAM : A.S.GADKARI, J.

DATE : 22nd August, 2017

P.C.

1. The petitioner has invoked the jurisdiction of this Court, under Article 227 of the Constitution of India, impugning the order dated 20.6.2017 passed by the Hon'ble Minister for Co-operation, Marketing and Textiles in Appeal Case No. APP-2017/PK-407/15/S confirming the orders dated 10.4.2017 passed by the Divisional Joint Registrar, Co-operative Societies, (SRA), Mumbai i.e. respondent No.1 herein under Section-77(A) of Maharashtra Co-op. Societies Act (for short "MCS Act")

appointing Administrator on the petitioner society and Show Cause Notice dated 9.3.2017 issued under Section 78(A) of MCS Act and further directed that the Election Officer to conduct the elections of the petitioner society within a period of two months from the date of passing of the impugned order.

2. Heard the learned counsel for the respective parties at length and perused the record annexed to the petition.

3. The record reveals that, after receipt of the complaint from respondent No.4, the office of the Respondent No.1 conducted inspection of the record of the petitioner society wherein it was revealed that the tenure of Managing Committee of the petitioner society had come to an end in June, 2016 and it did not take steps for conducting election of the new committee as contemplated under Section 73(l) of the MCS Act and therefore Respondent No.1 issued a notice under Section 77A on 9.6.2016. The petitioner society by its reply dated 20.10.2016 submitted information to the concerned authority, however did not give necessary and relevant

record for conducting elections of the petitioner society. As the Managing Committee Members of the petitioner society did not comply with the requisitions made by the office of respondent No.1 within stipulated period the respondent No.1 issued a notice dated 9.3.2017 under Section-78A of the MCA Act to four Managing Committee members of petitioner society and by its subsequent order dated 10.4.2017 passed under Section 77(A) appointed respondent No.2 as Administrator of the petitioner society for a period of 6-months. In the said order dated 10.4.2017 it has been categorically stated that though the tenure of the Managing Committee of the petitioner society has come to an end in June 2016 it did not conduct elections of the society as contemplated under Section 73CB of the MCS Act and the Members of the Managing Committee have no legal-right to conduct the affairs of the petitioner society and there is a vacuum created in the management of the society as contemplated under Section-77A(1)(b-1) of the MCS Act.

4. The petitioner society feeling aggrieved by the said notice dated 9.3.2017 and order dated 10.4.2017

passed by respondent No.1 preferred the aforesaid Appeal No.407/2015 before Hon'ble Minister for Co-operation, Marketing and Textiles .The Hon'ble Minister by the impugned order had rejected the said appeal and confirmed the order dated 10.4.2017 passed under Section 77A and the notice dated 9.3.2017 passed under Section-78A of the MCS. Act.

5. As noted earlier a bear perusal of record would reveal that the tenure of the Managing Committee of the petitioner society came to an end in June, 2016 and the Managing Committee did not take any steps to conduct the elections of the petitioner society prior to end of its tenure, neither they approached the concerned Election Authority for conducting the elections before June, 2016 and after inspection of the record the respondent No.1 has come to a conclusion that the Managing Committee of the petitioner society has committed default in complying with the provisions of MCS Act and therefore, issued a notice dated 9.3.2017 under Section 78A of the MCS Act to the Managing Committee members of the petitioner society. In pursuance of the various requisitions made by the office of

respondent No.1, the petitioner failed and/or neglected to comply with it within stipulated period and after noting various irregularities committed by the petitioner society, respondent No.1 issued the impugned order dated 10.4.2017 under Section 77A of the MCS Act. The record clearly reveals that the Managing Committee of the petitioner society prior to end of its tenure in June,2016 did not take any steps for conducting fresh elections as contemplated under the provisions of MCS Act and therefore, it is clear that there is a stalemate in the situation and the committee has ceased to function and vacuum is created in the management of society as contemplated under Section-77A(1)(b-i) of the MCS Act. The record further reveals that respondent No.1 though has appointed an Election Officer by its order dated 27.2.2017 to conduct elections of the petitioner-society the society till date did not supply with the necessary record to the said Election Officer for conducting elections.

6. The Hon'ble Minister after taking into consideration all the aforestated and other necessary facts of the matter has passed the impugned order dated

20.6.2017 and has rejected the Appeal of the petitioner society. This Court is of the considered opinion that both the authorities below have not committed any error or illegality either in law or on facts while passing the impugned order dated 10.4.2017 and in issuing Notice dated 9.3.2017.

7. The petition is devoid of merits, is accordingly rejected.

(A.S.GADKARI, J.)