

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10030 OF 2016

Mrs. Kanchan Mirchandani ...Petitioner

Versus

The Divisional Joint Registrar

And Ors. ...Respondents

WITH

Writ Petition NO. 10031 OF 2016

Mr. Oommen C. Chako ...Petitioner

Versus

The Divisional Joint Registrar

And Ors. ...Respondents

WITH

Writ Petition NO. 10032 OF 2016

Mr. Prakash Dhargalkar ...Petitioner

Versus

The Divisional Joint Registrar

And Ors. ...Respondents

WITH

Writ Petition NO. 10033 OF 2016

Mrs. Priyanka P. Sawant ...Petitioner

Versus

The Divisional Joint Registrar

And Ors. ...Respondents

....

Mr.S.K. Shinde a/w. Ajinkya J. Jaibhave, Advocate for the Petitioners.

Mr. S.D. Rayrikar, AGP for Respondents No.1, 2 and 5.

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CORAM : R. G. KETKAR, J.

DATE : 18th APRIL, 2017

P.C.

1. Heard Mr.S.K. Shinde, learned Counsel for the petitioners and Mr.S.D. Rayrikar, learned A.G.P. for respondents No.1, 2 and 5 in all the Petitions, at length.

2. These petitions take exception to the judgments and orders dated 31.8.2015 passed by respondent No.2 Deputy Registrar, Co-operative Societies, K/West Ward, Mumbai, as also the judgments and orders dated 10.5.2016 passed by respondent No.1 Divisional Joint Registrar, Co-operative Societies, Mumbai. By these orders, the Authorities below, in exercise of the powers under Sections 78A(1)(b) and 73CB of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act'), removed the petitioners who were co-opted in the Managing Committee of respondent No.4 Shree Swami Samartha Prasanna Oshiwara East Unit No.13 Co-operative Housing Society Ltd. (for

short, 'society') and further held that the petitioners are not eligible to be re-elected, re-co-opted or re-nominated as a member of any Committee of any society till the expiry of period of next one term of the Committee from the date on which he has been so removed. Since the common questions of law and facts are arising in these Petitions, same can conveniently be disposed of by this common order. For appreciating the controversy raised in these Petitions, the facts from W.P. No.10030/2016 are considered.

3. The General Election of respondent No.4 society was conducted in the year 2012. It appears that Smt. Neeta Tiwari and Shri Paresh Khot resigned from their post as Committee Member. In their place, Smt. Priyanka Sawant and Mr.Oommen Chacko were co-opted as Managing Committee members on 23.3.2013. It also appears that Smt. Smruti Sardesai and Shri Anand Poonchwani resigned as Member of the Managing Committee and in their places Smt. Kanchan Mirchandani (petitioner herein) and Mr.Prakash Dhargalkar were co-opted on 26.3.2014 in the Managing Committee of the fourth respondent. It appears that respondent No.3 Maj. Rathod made complaint to respondent No.2 Deputy Registrar on the ground that co-option

was made in violation of the provisions of Section 73CB(1) and (14)(b) read with Rule 74 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short, 'Rules').

4. On 12.5.2015, respondent No.2 Deputy Registrar issued show cause notice which was replied by the petitioners as also by the society. After consulting the Mumbai District Co-operative Societies Federation Ltd. (for short, 'Federal Society'), and after hearing the petitioners, in exercise of powers conferred by Section 78A(1)(b) and 73CB of the Act, respondent No.2 Deputy Registrar removed the petitioners from the Board of Directors and also disqualified them for next one term for being elected, co-opted, nominated on the Board of Directors. Aggrieved by this decision, the petitioner preferred Revision Application before the Divisional Joint Registrar which was dismissed on 10.5.2016. It is against these decisions, present petitions are instituted.

5. In support of the petitions, Mr. Shinde submitted that the petitioners are not at fault in not communicating the casual vacancy that arose on account of resignations by Members of the Managing Committee. In any case the Authorities below

were not justified in disqualifying them for the one next term for being elected, co-opted and nominated on the Board of Directors. In fact by communication dated 12.8.2013 the Federal Society opined that the petitioners have not misled or cheated the society and, therefore, disqualifying them for the next one term may be reconsidered. He submitted that as the petitioners are not at fault in not communicating the vacancy that arose in the Managing Committee, the authorities below were not justified in disqualifying them for next one term. He submitted that Section 78A(1) lays down that if the Committee or any member of such committee has committed any act, which is prejudicial to the interest of the society or its members or if the State Co-operative Election Authority (for short, 'Authority') has failed to conduct the elections in accordance with the provisions of the Act, the Registrar, after giving the Committee or the Member, as the case may be, an opportunity of stating its or his objections in writing and after giving a reasonable opportunity of being heard and after consultation with the Federal Society to which the society is affiliated comes to a conclusion that the charges mentioned in the notice are proved and the administration of the society cannot be carried out in

accordance with the provisions of the Act, the Registrar may by order (a) supersede the Committee and (b) remove the Member. In the first place, no charges are leveled against the petitioners and secondly, the authorities below failed to consider whether the actions either of the Committee or of the petitioners are prejudicial to the interest of the society or not. He, therefore, submitted that the petitions require consideration.

6. On the other hand Mr.Rayrikar supported the impugned orders and submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India as the society before co-opting the petitioners as members of the Managing Committee failed to comply with the requirements of Section 73CB(1) and (14)(b) read with Rule 74 of the Rules.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the general election of the fourth respondent was held in the year 2012. As per the provisions of the law prevailing at the time of 2012-2013, the election was held. Co-option was regulated by law as it

stood. After Ninety-Seventh Amendment to the Constitution which came into effect from 14.2.2013, the provisions of the Act were also suitably amended. Section 73CB(1) and 14(b) read thus :

“73CB. State Co-operative Election Authority

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to a society shall vest in the authority called as 'the State Co-operative Election Authority', as may be constituted by the State Government in that behalf. Every general election of the members of the committee and election of the office-bearers of a society including any casual vacancy, to the extent applicable, shall be held as per the procedure prescribed.

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(14) The committee of every co-operative society shall,-

(a) xxxxxxxx

(b) inform any casual vacancy occurred in the committee or its office bearers, within fifteen days of the occurrence of such vacancy;”

8. Rule 74 of the Rules lays down the manner in which

the casual vacancies are to be filled in. Rule 74 reads thus :

“74. Casual vacancies how to be filled in

In the event of vacancy occurring on account of death, resignation, disqualification or removal of the member of a society or through such a member becoming incapable of acting prior to the expiry of his term of office or otherwise, the Chief Executive Officer of the Society shall forthwith communicate the occurrence of such vacancies to the SCEA and the vacancy shall be filled as soon as conveniently, according to the provisions of the Act. The person so elected or co-opted or, as the case may be, nominated shall hold office so long only as the member of the committee in whose place he is elected, is co-opted or, as the case may be, nominated would have held it, if the vacancy had not occurred.”

9. Conjoint reading of Section 73CB(1) and (14)(b) as also Rule 74 leaves no room for doubt that the Committee has to inform any casual vacancy in the Committee or office-bearers within 15 days of the occurrence of such vacancy. The material on record does not indicate that after the resignation of the members of the Managing Committee, namely, Smt. Neeta Tiwari, Mr.Paresh Khot, Smt. Smruti Sardesai and Mr.Anand Poonchwani, respondent No.4 society intimated said fact to the Authority as required by Section 73CB(1) and (14)(b) of the Act. The authorities below have concurrently found that there is violation of the provisions of Section 73CB(1) and (14)(b) of the

Act read with Rule 74 of the Rules. Before passing the impugned orders, the authorities have followed the procedure of issuing notice as also calling for explanation of the society and the petitioners. After hearing the petitioners as also after consulting the Federal Society, the impugned orders are passed. In other words, it cannot be said that the impugned orders are passed without following the procedure prescribed in that behalf.

10. Mr. Shinde relied upon the communication dated 12.8.2015 of the Federal Society to the effect that the petitioners may be disqualified as Members of the Managing Committee, however, as they have not cheated the society or misled the society, the proposed action of disqualifying them for one term may be reconsidered. In my opinion, the requirement of the statute is to consult the Federal Society. The consultation does not mean concurrence. Understood thus, the Deputy Registrar, after consulting the Federal Society has passed the impugned order in exercise of powers under Section 73CB read with 78(A) (b).

11. Mr. Shinde submitted that the fault lies with the society in not communicating the casual vacancies and not on

the petitioners. It is not possible to accept this submission. The petitioners are the beneficiaries of the acts of the society. The petitioners cannot claim that as the society did not communicate the casual vacancy, they should not suffer. The authorities below after considering the material on record have concurrently held that the petitioners have incurred disqualification for non-compliance of provisions of 73CB(1) and (14)(b) of the Act with Rule 74 of the Rules. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)