

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION (ST.) NO. 21902 OF 2017

Ali Imam Hossain ... Petitioner
V/s.
Suresh Khedekar & Ors. ... Respondents

**WITH
WRIT PETITION (ST.) NO. 24681 OF 2017**

Mr. Mahendra B. Parmar ... Petitioner
V/s.
The Divisional Joint Registrar,
Co-operative Societies,
Mumbai Division, Mumbai & Ors. ... Respondents

Mr. Satish Borulkar i/b Mr. Manoj Patil for the Petitioner.
Mr. Sachin Kankal, A.G.P.
Mr. Umesh Chandra Yadav a/w Mr. Dhiraj Gole for the Respondents.

CORAM : M.S. SONAK, J.

DATE : 12th SEPTEMBER, 2017.

P.C. :

1 In Writ Petition (Stamp) No.24681 of 2017, Rule.

2 Rule is made returnable forthwith at the request and
with the consent of learned counsel appearing for the parties.

3 Mr. Yadav, learned counsel for the petitioner, in Writ Petition (Stamp) No.24681 of 2017 submits that the Divisional Joint Registrar Co-operative Societies, Mumbai Division, Mumbai, (Revisional Authority) has by impugned order dated 10.08.2017 declined to grant interim relief to the petitioner, by misconstruing the scope and import of the order made by this Court on 21.04.2017. He submits that there is no independent application of mind by the Revisional Authority on the issue as to whether the petitioner was required to be granted interim relief or not. He submits that this virtually amounts to non consideration of the petitioner's application of interim relief. He submits that on merits, the petitioner has a good case and if interim relief is declined in this manner, the respondents, who are in fact disqualified from holding any office, will resume the reins of office. On this ground Mr. Yadav submits that the impugned order dated 10.08.2017 may be set aside.

4 Mr. Borulkar, learned counsel for the respondent No.4 in Writ Petition (Stamp) No.24681 of 2017 and the petitioner in Contempt Petition (Stamp) No.21902 of 2017 submits that this Court, in its order dated 21.04.2017 in Writ Petition No.4451 of 2017 has clearly stated that the administrator can continue during

the pendency of proceedings before the Deputy Registrar and for a period of two weeks thereafter. From this, it is clear that this Court, never intended the administrator to continue in office beyond a period of two weeks from the date of disposal of proceedings before the Deputy Registrar. Mr. Borulkar points out that the Deputy Registrar has in fact rejected all the contentions raised by the petitioner in Writ Petition (Stamp) No.24681 of 2017. In the normal course, the administrator should have vacated office and handed over the charge to the respondent No.4/Contempt Petitioner. However, administrator, has refused to do so and, therefore, the Contempt Petition (Stamp) No.21902 of 2017. Mr. Borulkar submits that the revisional authority had no jurisdiction to extend the continuance of the administrator in the light of clear directions of this Court in its order dated 21.04.2017. Even on merits, there is absolutely no case made out for continuance of the administrator. On these grounds, Mr. Borulkar submits that the Writ Petition may be dismissed and proceeding be initiated against the administrator for refusing to handover charge to the Contempt Petitioner.

5 The learned A.G.P. for the State / administrator submits that the administrator has no personal interest in the matter. The

administrator in fact, attempted to handover the charge upon expiry of the period prescribed. However, instead of accepting the charge, the Contempt Petitioner made telephone calls to the police and declined to accept charge. No doubt, these contentions are denied by Mr. Borulkar who appears for the Contempt Petitioner. Mr. Borulkar submits that the Contempt Petitioners wanted to take the charge from the administrator and there is no question of contempt petitioners declining to accept charge.

6 For the present, there is no point going into the controversy between the contempt petitioner and the administrator. This is because I am satisfied that the impugned order dated 10.08.2017 by which the Revisional Authority has declined to grant any interim relief to the petitioner in the Writ Petition, is required to be set aside.

7 This Court by its order dated 21.04.2017 in Writ Petition No.4451 of 2017 made the following order :-

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

(i) Order dated 10.7.2015 passed by the Deputy Registrar, Cooperative 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.”

8 The aforesaid order in relation to continuance of the administrator for a period of two weeks from the date of the disposal of proceedings before the Deputy Registrar was made, in order to enable the aggrieved party to institute a revision against the order of the Deputy Registrar and therein, to seek interim reliefs. Instead, the Revisional Authority in the present case, by misconstruing the order

dated 21.04.2017 has declined to even consider the petitioners prayer for interim relief by making the following observation :-

“On the aforesaid prayer it is pertinent to note that Hon'ble High Court by order dated 29/11/2016 have appointed Administrator upon the Respondent No.3 society, which was continued by Hon'ble Court by order dated 20/02/2017. Therefore, this Authority cannot interfere in the issue of continuation of Administrator on the Respondent society. Hence, the prayer clause (b) of the Application for interim relief cannot be entertained by this Authority. ”

9 From the aforesaid, it is very clear that the revisional authority has virtually refused to exercise jurisdiction to consider the petitioner's application for interim relief. The revisional authority was required to consider the application for interim relief on its own merits and in accordance with law. If, the revisional authority, upon such consideration, were to conclude that the petitioner is not entitled to any interim relief, then perhaps, that might not have been a case of failure to exercise jurisdiction. However, in this case, the revisional authority, by misconstruing the order made by this Court had not even adverted to usual parameters necessary to be taken into consideration for deciding the application for interim relief. On this short ground, the impugned order dated 10.08.2017 is set aside.

10 Since, there has been no consideration of the petitioner's application for interim relief and further, since the administrator, has continued since 29.11.2016, it is only proper that the administrator continues in office until the petitioner's application for interim relief is disposed of by the revisional authority in accordance with law and on its own merits.

11 The impugned order dated 10.08.2017 is set aside. The Revisional authority is directed to reconsider the petitioner's application for interim relief in accordance with law and on its own merits. The revisional authority shall afford opportunity of hearing to all the parties concerned and dispose of the application for stay within a period of two weeks from the date of receipt of authenticated copy of this order. Until the application for stay is disposed of, the administrator shall continue in office by way of ad-interim relief. It is, however, made clear that the revisional authority shall not merely continue the appointment of the administrator because, this Court, has ordered the continuance. The revisional authority is expected to apply its mind to the merits and demerits of the application for the interim relief and, thereafter, take an independent decision in the matter. The parties to co-operate in

the matter of expeditious disposal of the application for interim relief.

12 The Rule is made absolute in the aforesaid terms in the Writ Petition.

13 In view of the aforesaid order in the Writ Petition, there is no case made out to entertain the contempt petition, which is hereby dismissed.

14 The Writ Petition and the Contempt Petition are disposed of in the aforesaid terms.

15 After this order was dictated, Mr. Borulkar, learned counsel appearing for respondent No.4 in the Petition and for the petitioner in the Contempt Petition, makes a fair suggestion that the revisional authority may be directed to dispose of the main Revision Application on merits, rather than the parties spend time in pursuing the application for interim relief. He submits that in the meanwhile, the administrator can continue to hold office. As noted earlier, this suggestion is really fair and it is in the interest of justice.

16 Therefore, in super-session of the earlier directions in paragraph (11), the Writ Petition and Contempt Petition are disposed of with the following order :-

a) the impugned order dated 10.08.2017 made by revisional authority is set aside;

b) By way of interim relief it is directed the administrator shall continue in office until the disposal of Revision Application No.346 of 2017 by the revisional authority;

c) Revisional Authority is directed to dispose of Revision Application No.346 of 2017 as expeditiously as possible and in any case within a period of three months from the date of production of authenticated copy of this order.

17 Parties to appear before the revisional authority on 21.09.2017 and produce authenticated copy of this order.

18 It is made clear that this court has not adverted to the merits of the matter and, therefore, all contentions of all parties are kept open to be decided to the revisional authority. Revisional authority need not be influenced by any observation made in the present order or in any earlier orders made by this Court but shall dispose of the revision application on its own merits and in accordance with law. In the present case, there is no order as to costs.

19 All concerned to act on the basis of an authenticated copy of this order.

(M.S. SONAK, J.)