

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

WRIT PETITION STAMP NO.33193 OF 2016

Hanmantrao Banduji Pawar and ors.

: Petitioners.

versus

**Ajinkya Nagari Sahkari Patsanstha,
Sangli, Through its Liquidator and ors.**

: Respondents.

Mr. U R Mankapure for the Petitioners.

Mr. P R Kadam for the Respondent No.1.

Mrs. M S Bane, "B" Panel Counsel for the Respondents-State.

CORAM : R. M. SAVANT, J.

DATE : 02nd February 2017

P.C.

1 The order dated 05/10/2016 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur is taken exception to by way of the above Petition.

2 The Petitioners herein are the ex-directors of the Respondent No.1 Society. On account of various acts of omission and commission as also irregularities committed by the management of the Respondent No.1 an enquiry under Section 83 of the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act") came to be initiated against the Petitioners. The enquiry culminated in the submission of a report dated 21/03/2009. The management i.e. the board of directors was indicted on as many as 13 grounds of irregularities which were found by the enquiry officer. In so far as 13

grounds are concerned, it appears that in respect of 3 grounds, the proceedings were initiated under Section 88 of the said Act and in respect of the other 10 grounds the directions were issued that the proceedings under Section 87(4) of the said Act be initiated for rectification. On account of the fact that the Respondent No.1 was in dire financial condition that a liquidator came to be appointed on 15/02/2010.

3 It appears that a notice under Rule 72(2) of the Maharashtra Co-operative Societies Rules 1961 (for short “the said Rules”) came to be issued to the Petitioners on 17/08/2015. The said notice was in respect of fixing the liability under Section 88 of the said Act in so far as the other 10 grounds are concerned. The said notice was questioned on behalf of the Petitioners by filing a Revision being No.397 of of 2015 and the principal ground was that the said notice could not have been issued unless the direction of proceeding under Section 87(4) of the said Act for rectification was carried out. The said submission seems to have been appealed to the Divisional Joint Registrar, Kolhapur Division, Kolhapur who by his order dated 16/03/2016 set aside the said notice. The Divisional Joint Registrar has observed that though out of 13 points only in respect of 3 points liability was fixed, however for a fresh enquiry principles of res-judicate would be applicable. The Divisional Joint Registrar opined that for conducting proceedings again, the enquiry report under Section 88 of the said Act needs to be rejected accepted or partly

accepted. The Divisional Joint Registrar observed that District Deputy Registrar is free to initiate fresh proceeding but the said course of action was not followed by the District Deputy Registrar and therefore, according to him, the Revision Application was required to be allowed.

4 In so far as the Respondent No.1 is concerned, one Shri I R Khan, a retired Assistant Registrar was appointed as an authorized officer for holding an enquiry under Section 88 of the said Act in respect of the remaining grounds, in respect of which the liability was to be fixed. The said authorized officer issued a notice under Rule 72(2) of the said Rules dated 10/06/2016 to the Petitioners. In the said notice it was mentioned that the authorized officer was not given an opportunity by the Divisional Joint Registrar in the Revision filed by the Petitioners to demonstrate that the charges in respect of the enquiry which was conducted by Smt. J A Amrutsagar were different than the charges in respect of which enquiry was being held by him and therefore it necessitated a notice under Rule 72(2) of the said Rules to be issued to the Petitioners.

5 The Petitioners challenged the said notice issued under Rule 72(2) of the said Rules by filing Revision Application being No.290 of 2016 before the Divisional Joint Registrar and the stand taken by the Petitioners was that the order dated 16/03/2016 passed by the Divisional Joint Registrar in the

Revision filed by the Petitioner had become final and therefore no fresh notice could be issued under Rule 72(2) of the said Rules.

6 The Divisional Joint Registrar has by the impugned order dated 5/10/2016 has dismissed the Revision filed by the Petitioners. The gist of the reasoning of the Divisional Joint Registrar was that the notice dated 10/06/2016 was on different points mentioned in the order dated 24/10/2013 and therefore the notice issued on 10/06/2016 which is based on the order dated 24/10/2013 is just and proper as the said order dated 24/10/2013 has not been challenged. The Divisional Joint Registrar has also referred to a judgment of a learned Single Judge of this Court (R.M.Savant,J) dated 18/03/2016 passed in Writ Petition No.11417 of 2015 in the matter of Sunil Sitaram Mahajan vs. Suryakant Pandurang Badave wherein it has been held that the notice is not an order or decision so as to entitle a party to invoke the revisionary jurisdiction under Section 154 of the MCS Act 1960. On such consideration the Divisional Joint Registrar came to a conclusion that the Revision filed by the Petitioners in the earlier round was not maintainable and therefore the order passed in the said Revision is of no avail. The Divisional Joint Registrar accordingly dismissed the said Revision filed by the Petitioners and thereby has opened the avenue for proceeding against the Petitioners under Section 88 of the said fact to fix the liability in respect of the losses caused to the Respondent No.1 Society.

7 The learned counsel appearing for the Petitioners Shri Umesh Mankapure would contend that the notice issued under Rule 72(2) of the said Rules earlier by the authorized officer having been set aside in revision, it was not open for the authorized officer once again in ignorance of the said order passed in the Revision to re-issue the notice under Rule 72(2) of the said Rules. It was therefore the submission of the learned counsel for the Petitioners that the notice dated 10/06/2016 issued to the Petitioners is without jurisdiction.

8 In my view, it is not possible to accept the said contention urged by the learned counsel for the Petitioners. As held by the Divisional Joint Registrar in the impugned order, a Revision filed against a notice being not maintainable, the Revision filed by the Petitioners in the earlier round was therefore not maintainable. The Divisional Joint Registrar has therefore rightly opined in the impugned order that it is for the Petitioners to take such defences as are available to them in respect of the notice issued and ultimately if aggrieved by the order that would be passed under Section 88 of the said Act to avail of the remedy provided against such an order. Assuming that there is some illegality or irregularity in the issuance of the notice by the authorized officer, in the teeth of the order passed by the Divisional Joint Registrar in the earlier round. In my view, in the facts of the present case where the Revision filed by the Petitioners in earlier round was not maintainable, this Court does

not deem it appropriate to exercise its writ jurisdiction under Article 227 of the Constitution of India. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]