

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2058 OF 2017
WITH
WRIT PETITION (L) NO.1399 OF 2017
WITH
WRIT PETITION NO.1464 OF 2017
WITH
WRIT PETITION NO.1790 OF 2017
WITH
WRIT PETITION NO.1815 OF 2017
WITH
WRIT PETITION NO.1861 OF 2017
WITH
WRIT PETITION NO.1897 OF 2017
WITH
WRIT PETITION NO.1947 OF 2017
WITH
WRIT PETITION NO.1982 OF 2017
WITH
WRIT PETITION (L) NO.2477 OF 2017

Fulwanti C Rathod

..Petitioner.

V/s.

State Of Maharashtra Through Deputy
Registrar Of Societies P Ward & Anr.

..Respondents.

Mr.Satish J. Agrawal for the Petitioner.

Mr.S.B. Gore for Respondent No.2.

Mr.Kunal Banage, AGP for Respondent No.1-State in WP/1815/17,
WP/1982/17 & WPL/2477/17.

Mr.Amar Mishra, AGP for Respondent No.1- State in WP/2058/17, WP/1464/17 & WP/1790/17.

Mr.Himanshu Takke, AGP for Respondent No.1-State in WP/1897/17, WP/1861/17, WPL/1947/17 & WPL/1349/17.

CORAM: M.S. SONAK, J.

DATE : OCTOBER 10, 2017

ORAL JUDGMENT

Heard learned counsel for the parties.

2. In all these petitions, challenge is to the order dated December 31, 2016 made by the Deputy Registrar of the Co-operative Society under the provisions of section 101 of the Maharashtra Co-operative Societies Act, 1960 (MCS Act).

3. Learned counsel for the Respondents raised a preliminary objection by submitting that the Petitioners, as against the impugned orders, have an alternate and efficacious remedy of instituting a revision before the Revisional Authority in terms of section 154 of the MCS Act. He submits that in terms of section 154(2A) of the MCS Act, no

application or revision shall be entertained against the recovery certificate issued by the Registrar under section 101 of the MCS Act, unless the Applicant deposits with the concerned society, fifty percent of the total recoverable dues. He submits that this is a mandatory requirement and, because, the Petitioners do not intend to comply with this requirement, the Petitioners have directly instituted the writ petitions in this Court.

4. Learned counsel for the Petitioners submits that the impugned order made by the Deputy Registrar are in violation of the principles of natural justice. He submits that where there is violation of principles of natural justice, normally, any objection raised about the availability of alternate remedy is not entertained. He further submits that in this case, arguments were raised only on the preliminary objection, however, the Deputy Registrar, while rejecting the preliminary objection raised, has proceeded to dispose of the entire matter on merits. Learned counsel for the Petitioners submits that there was no opportunity of hearing granted to the Petitioners, in so far as the merits are concerned.

5. From the record, the factual position is not quite clear. Learned counsel for the Respondents submits that the argument were

advanced both on the preliminary issue as well as on merits, which is disputed by learned counsel for the Petitioners. In the impugned order, again, there is no clarity, though, most of the discussion does appear to pertain to the aspect of *res judicata*, which was the preliminary objection raised in the matter. In any case, where the allegation of breach of principles of natural justice, itself requires investigation, there is no reason to deviate from the normal principles that the Petitioners must exhaust the alternate and efficacious statutory remedies available to them. Accordingly, there is no reason to entertain the present petitions, when, the Petitioners, have alternate and efficacious statutory remedies available to them under section 154 of MCS Act.

6. However, the Petitioners are granted liberty to avail the alternate remedy available to them under section 154 of the MCS Act, no doubt, upon due compliance of the statutory provision, including the provisions described under section (2A) of Section 154 of the MCS Act.

7. Since the Petitioners were pursuing the matter before this Court, it will not be appropriate if the Petitioners are non suited on the ground of limitation. Learned counsel for the Petitioners, on instructions

from the Petitioners, states that revision applications will be instituted before the Revisional Authority within a period of four weeks from today. If the revision applications are indeed instituted within a period of six weeks from today, no doubt, upon due compliance with the provisions of sub-section (2A) of section 154 of the MCS Act, then, the Revisional Authority to hear and decide such revision applications on their own merits and without adverting to the issue of limitation. In fact, learned counsel for the society–Respondent No.2 agreed that the issue of limitation will not be raised, no doubt, provided there is due compliance in terms of sub-section (2A) of section 154 of the MCS Act.

8. The petitions are accordingly disposed of with liberty as aforesaid. In the facts and circumstances of the case, there will be no order as to costs.

9. This Court has not adverted to the merits of the matter and, therefore, all contentions of all the parties are left open for the decision by the Revisional Authority in accordance with law and on their own merits.

(M.S. SONAK J.)