

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1390 OF 2017

Smt. Mohana Nair & Others	]	Petitioners
Vs.		
The Divisional Joint Registrar C.S.	]	
Mumbai Division, Mumbai & Ors.	]	Respondents

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Mr. Anil Anturkar, Senior Advocate i/b Mr. P. S. Shah, for the petitioner.

Mr. Manish Upadhye, A.G.P for respondents No.1, 2 and 5.

Mr. P.K. Dhakephalkar, Senior Advocate, for respondent No.3.

Mr. Akhileshwar Sharma, for respondent No.4.

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CORAM : R.G. KETKAR, J.

DATE : 29TH JUNE, 2017.

P.C.

Heard Mr. Anturkar, learned Senior Counsel for petitioners, Mr. Upadhye, learned A.G.P, for respondents No. 1, 2 and 5, Mr. Dhakephalkar, learned Senior Counsel for respondent No.3 and Mr. Sharma, learned Counsel for respondent No.4 at length.

2. By this Petition under Article 226 of the Constitution of

India, the petitioners have challenged the judgment and order dated 21st April, 2016 passed by the Divisional Joint Registrar, Co-operative Societies, order dated 4th December, 2015 passed by the Assistant Registrar Co-operative Societies and order dated 7th April, 2017 passed by the Hon'ble Minister of Co-operation, Marketing and Textiles, Government of Maharashtra.

3. By order dated 4th December, 2015, Assistant Registrar disqualified the petitioners from being Members of Managing Committee under Section 78 (A) (1) (b) of the Maharashtra Co-operative Societies Act, 1960 [for short 'Act']. Assistant Registrar further held that recovery of Infrastructure Replacement Fund [I.R.F] is illegal and issued direction under Section 79(2) of the Act to recover that amount within one month. Aggrieved by that decision, petitioners preferred appeal bearing No. 164 of 2015 under Section 152 of the Act before Divisional Joint Registrar, Mumbai Division, Mumbai. By order dated 21st April, 2016, appeal was dismissed. Aggrieved by that decision, the petitioners preferred Revision Application No. 400 of 2016 under Section 154 of the Act before State Government. During pendency of the Revision Application, by order dated 29th September, 2016, Hon'ble

Minister granted stay to the orders passed by the Assistant Registrar and Divisional Joint Registrar. By final order dated 7th April, 2017, Hon'ble Minister dismissed the Revision Application.

4. In support of this Petition, Mr. Anturkar submitted that Appellate Authority, Divisional Joint Registrar has reproduced various contentions advanced before him. However, Appellate Authority did not deal with contentions and dismissed the appeal by observing thus:

“It seems that the Appellants herein had failed and made negligence to discharge his duties as per the provisions of M.C.S Act 1960, Rules framed thereunder and Bye-laws of the Society. The applicant in the instant case has not given satisfactory explanation on the grounds mentioned in the impugned order. The respondent Assistant Registrar before passing the impugned order has followed the due process of law. Hence, I do not find any legal infirmity to interfere with the impugned order”.

He, therefore, submitted that the order deserves to be set aside.

5. After arguing the Petition for some time, Mr. Dhakephalkar & Mr. Sharma submitted that by consent the order passed by Divisional Joint Registrar may be set aside and Divisional Joint Registrar be directed to dispose of the appeal within three

weeks from the date of appearance of the parties.

6. In view thereof, by consent of the parties, order dated 21st April, 2016 passed by Divisional Joint Registrar, Co-operative Societies as also order dated 7th April, 2017 passed by the Hon'ble Minister is set aside and Appeal No. 164 of 2015 is restored to the file of the Divisional Joint Registrar. Parties shall appear before the Divisional Joint Registrar on 3rd July, 2017 at 11.00 a.m and for that purpose no fresh notice be issued to them and Divisional Joint Registrar shall deal with the contentions of the parties and decide the appeal within three weeks from the date of appearance of the parties. All the contentions of the parties on merits are expressly kept open. Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]