

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 55 OF 2017

Tajdin K. Hirani .. Petitioner
vs.
Divisional Joint Registrar and ors. .. Respondents

Ms Manisha B. Gawde for the Petitioner.
Mr. S.B. Gore, AGP for Respondent Nos.1 and 2- State.
Mr. Shantanu S. Raktate for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 28 AUGUST 2017.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties Rule is made returnable forthwith.

2] The challenge in this petition is to the orders dated 29th November 2016 made by the Divisional Joint Registrar confirming the order dated 9th June 2016 made by the Assistant Registrar, Cooperative Societies, removing the petitioner as Chairperson of the Society by invoking the provisions of Section 78A of the Maharashtra Cooperative Societies Act, 1960 (MCS Act).

3] Section 78A of the MCS Act reads as follows:

“78A. Power of supersession of committee or removal of member, thereof-

(1) If in the opinion of the Registrar, the committee of 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 has failed to conduct the elections in accordance with the provisions of this Act or where situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has, or is likely to, come to a stand-still or if serious financial irregularities or frauds have been identified or if there are judicial directives to this effect or, if there is a perpetual lack of quorum or, where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such committee stands disqualified by or under this Act for being a member of the committee, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections in writing as provided under sub-section (1) of section 78 and after giving a reasonable opportunity of being heard, and after consultation with the federal society to which the society is officiated 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 this Act, rules and by-laws, he may by order stating reasons therefor -

(a) (i) supersede the committee, and

(ii) appoint a committee consisting of three or more members of the society otherwise than the members of the committee so superseded, in its place, or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of the society for a period not exceeding six months;

Provided that, the Registrar shall have the power to change the committee or any member thereof or administrator or administrators appointed at his discretion even before the expiry of the period specified in the order made under this sub-section:

Provided further that, such federal society shall communicate its opinion to the Registrar within forty-five days, from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to order of supersession or removed of a member and the Registrar shall be

at liberty to proceed further to take action accordingly;

Provided also that, in case of a society carrying on business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply and the committee shall not be superseded for a period exceeding one year:

Provided also that, nothing in this sub-section shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government;

(b) remove the member:

Provided that, the member who has been so removed, shall not be eligible to be reelected, 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;

Provided further that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply.

(2) The provisions of sub-sections (3),(4),(5) and (6) of section 78 shall apply mutatis mutandis, in relation to supersession or removal under this section.

4] The section contemplates afford of opportunity of hearing to the person against whom action is contemplated. This in terms, postulates issuance of notice to such person informing him of the tentative ground on which the action is proposed.

5] In the present case, there is nothing on record to indicate that any notice was issued to the petitioner, before the Assistant Registrar in exercise of powers conferred upon him by Section 78A of the MCS Act made the order dated 9th June 2016 and ordered his removal as

Chairperson of the Society. Though, the petitioner raised this specific ground before the Revisional Authority, i.e., Divisional Registrar, the impugned order dated 29th November 2016 indicates that there has been no specific consideration of this ground. On this short ground, the impugned orders dated 9th June 2016 and 29th November 2016 are required to be set aside and are hereby set aside.

6] Learned counsel for the petitioner concedes that the order dated 9th June 2016 can itself be considered as a show cause notice and in pursuance of the same, the petitioner will file reply within a period of two weeks from today. The petitioner is granted liberty to file reply within two weeks from today by treating the order dated 9th June 2016 itself as show cause notice. The Assistant Registrar is then directed to dispose of the matter having regard to the provisions of Section 78A of the MCS Act after afford of opportunity of hearing to the petitioner and Society as also respondent No.3, i.e., original complainant. The Registrar should comply with other requirements of Section 78A of the MCS Act, which includes consultation with the Federal Society. The Assistant Registrar to complete this process within a period of two months from the date the petitioner files reply as aforesaid. Learned counsel for the

petitioner assures this Court that the petitioner will not delay the filing of reply. In case, no reply is filed within two weeks, the Assistant Registrar shall proceed with the matter on the basis that the petitioner has no further say in the matter. The Assistant Registrar shall, however, not permit himself to be influenced by the order dated 9th June 2016, which is to be treated only as a show cause notice.

7] Rule is made absolute to the aforesaid extent. There shall however, be no order as to costs.

(M. S. SONAK, J.)