

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 942 OF 2017
WITH
CIVIL APPLICATION NO. 5742 OF 2017
WITH
CONTEMPT PETITION NO. 540 OF 2017

Radhakishan Bhaurao Shitlambe

...Petitioner

versus

The State of Maharashtra and others

...Respondents

.....
Mr. M.G. Kolse Patil, advocate for the petitioner
Mr. S. N. Morampalle, A.G.P. for respondent Nos. 1 to 4
Mr. K.J. Suryawanshi, advocate for respondent No.5.
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CORAM : V. K. JADHAV, J.
DATED : 5TH APRIL, 2018

PER COURT :-

1. By consent, heard finally at admission stage.
2. By way of this Writ Petition, the petitioner is challenging the order dated 5.1.2017 passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad in Appeal No. 31 of 2016. It is also prayed that the order dated 11.8.2016 passed by respondent no.3- Deputy Registrar, Co-operative Societies, Aurangabad be restored.
3. Brief facts giving rise to the present Writ Petition are as follows:-

a) The petitioner is a founder member of a Co-operative Housing Society, namely, Santaji Co-operative Housing Society Limited, situated at gat no. 40, Kanchanwadi, Aurangabad. The said society is registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and the Rules of 1961 (hereinafter for short referred to as the "Societies Act" and "Societies Rules", respectively). There are in all 103 members of the said society. By following due procedure of law, plots were allotted to each of the members and there is no dispute amongst the members in respect of allotment of plots. Respondent no.5 herein, by misleading respondent no.3, got elected as Chairman of the said society. Respondent no.5 is holding charge of the post of Chairman for a period of more than 10 years from the date of registration of the said society, which is contrary to the provisions of section 73-A(5) of the Societies Act.

b) The other members of the society have made various complaints to respondent no.3 in respect of mismanagement on the part of respondent no.5 in managing the affairs of the society. Since there was mismanagement on the part of respondent no.5 in managing the affairs of the society, respondent no.3, by order dated 11.8.2016, has appointed respondent no.4 as Administrator of the society. It has been directed to respondent no.4 to take charge from

respondent no.5 and hold elections of the society and complete the entire election process within a period of two months.

c) Being aggrieved by the order dated 11.8.2016 passed by respondent no.3, respondent no.5 had filed an appeal bearing Appeal No. 31 of 2016 before respondent no.2-Divisional Joint Registrar, Co-operative Societies, Aurangabad. Respondent no.2, by order dated 05.01.2017, has allowed the said appeal. Hence, this writ petition.

4. Learned counsel for the petitioner submits that in view of the provisions of the Societies Act, respondent no.5 has no authority to file appeal before respondent no.2 in the capacity of Chairman of the society, as after appointment of the Administrator, respondent no.5 is disqualified to hold the post of Chairman. After expiry of the term of Board of Directors, respondent no.5 is trying to mislead respondent nos. 3 and 4 so as to prolong the election of the society. Learned counsel submits that the impugned order is contrary to the provisions of Section 77A(1)(b) of the Societies Act, as the tenure of Board of Directors has come to an end on 31.3.2015 and thereafter the Administrator has been appointed by following due process of law. Learned counsel for the petitioner submits that respondent no.5-Chairman was holding the charge since 1983 i.e. from the date of

registration of the society, which is more than a period of 10 years and as per the amended provisions of Section 73(A)(5) of the Societies Act, respondent No.5 is disqualified to hold the post of Chairman. There are no dues against the petitioner and even no notice is issued to the petitioner for payment of dues and therefore, respondent no.5 has no power to exclude name of the petitioner from the members of the society.

5. Learned counsel for respondent no.5 submits that respondent no.5 has conducted elections of the society from time to time and the last election was conducted by appointing respondent no.3 as an Election Officer on 17.3.2010. Respondent no.5 has maintained the record of the society properly and there is no mismanagement in conducting the affairs of the society. The society had issued notices to the petitioner asking him to deposit the due amount, however, till this date, the petitioner has not deposited the same. On complaint of one of the members, inquiry officer was appointed and after conducting detail inquiry, it transpired that an amount of Rs.9,64,236/- was due against the petitioner and the petitioner was directed to deposit the said amount by issuing notices from time to time.

6. Learned counsel for respondent no.5 submits that even after

making inquiry on the basis of the complaint filed by the petitioner and others members of the society, no illegality was found in the affairs of the society. Respondent no.5 has submitted applications on 4.10.2014 and on 25.6.2015 to respondent no.3 for electing new Managing Committee members of the society. Learned counsel submits that respondent no.5 has taken all the necessary steps for conducting the elections, including deposit of election expenses etc. Learned counsel submits that defaulter member is not entitled to vote in the election process. Since the petitioner is defaulter, his name is not included in the voters list which is finalized on 12.7.2016. Learned counsel submits that considering all these facts, respondent no.2 has rightly passed the order. There is no substance in the writ petition.

Learned counsel for respondent no.5, in order to substantiate his submissions, placed reliance on the following judgments:-

- i) ***Nandkumar Mansing Katkar and others vs. Mumbai District Central Co-operative Bank Ltd.***, reported in **2005 (2) Mh.L.J. 827**;
- ii) ***Tinajirao Ramrao Kale vs. The State of Maharashtra and others***, reported in **2001 (3) ALL MR 184**.

7. I have also heard the learned A.G.P. for respondent nos. 1 to 4,

who supports the impugned order. Learned A.G.P. submits that the State Co-operative Election Authority had appointed one Mr. N.R. Yawalkar as Authorized Officer for conducting elections of the respondent-society vide order dated 8.9.2015. Learned A.G.P. submits that respondent no.3 has not considered the the provisions of Rules 75 and 76 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short, "Election Rules of 2014"). Learned A.G.P. submits that there is no error in the impugned order passed by respondent no.2.

8. It appears that the election of the Managing Committee of respondent no.5-society was due in the month of April 2015 and before expiry of the term, respondent no.5-society submitted an application dated 04.10.2014 and 25.06.2015 to respondent no.3 alongwith the list of the voters and requested to take steps for conducting elections of the Managing Committee of the society. Though respondent no.5-society had submitted the voters list on 04.10.2014, the Election Officer issued letter dated 24.02.2016 directing the respondent-society to submit a provisional voters list and to deposit the election expenses. As per the said letter, respondent no.5-society deposited the election expenses through cheque and again submitted the voters list. In the said voters list, total 103 members were mentioned out of which some were

defaulters, including the present petitioner. Since the petitioner and other persons have raised objection before respondent no.3 in respect of the provisional voters list dated 04.03.2016, respondent no.3 has directed inquiry through Auditor illegally, which is not permissible as per the Election Rules of 2014. However, it is part of record that the petitioner and other persons have withdrawn their objection by submitting an application before respondent no.3. Even respondent no.5-society, by filing Writ Petition No. 4668 of 2016, challenged the orders dated 11.12.2015 and 11.03.2016 passed by respondent no.3. After filing of the said Writ Petition, respondent no.3 has changed the order dated 11.12.2015 and issued another order dated 25.05.2016 by appointing respondent no.4 as election officer to conduct the election. Thereafter, respondent nos. 3 and 4 orally directed the society to publish the provisional voters list on notice board and finalize the same by inviting objections. After completing the process, respondent no.5-society has submitted the final voters list to respondent nos. 3 and 4 on 12.07.2016, but they did not take further steps to conduct elections. It is part of record that since October 2014, respondent no.5-society has made requests to respondent no.3 to conduct election, but respondent no.3 failed to conduct the same. The first voters list was submitted in the office of respondent no.3 on 04.10.2014 and thereafter no action was taken except directing respondent no.5-society to submit voters list.

9. In the case of ***Nandkumar Mansing Katkar and others*** (supra), relied upon by learned counsel for the respondent no.5, this court has dealt with the provisions of Section 77-A of the Co-operative Societies Act, 1960, before and after the amendment. As per the amended provision, the statute now provides that in the generality of cases, the Managing Committee shall cease to hold office on the expiry of its term and shall be deemed to have vacated its office. The proviso, however, allows the existing term of the Managing Committee to continue in one specified eventuality, namely, in the event that the Collector has failed to hold the election to the committee. The words "failure to elect" would, according to the Division Bench of this Court (in the case of *Ghatageppa Parreppa Mugeru vs M. R. Naik*, 1983 Mh.L.J. 984), implicate that the failure should be on the part of the members of the society. In the said case of ***Nandkumar Mansing Katkar***, a reference is made to the observations made by a Division Bench of this Court in the case of ***Suresh Ambadasrao Warpurkar vs. State of Maharashtra***, 1997(1) All MR 335, wherein it was observed that if the elections were postponed because of the exercise of the Government's powers, then the continuance of the committee will be a consequence not to be attributed to the members' desire to continue in office. Thus, the action of the Registrar in appointing an

administrator was accordingly set aside.

10. In the instant case, the order of respondent no.3 dated 11.08.2016 is not at all sustainable in the eyes of law. Respondent no.5-society has conducted elections of the society from time to time and also maintained record of the society. *Prima facie*, there is no evidence about mismanagement in conducting elections of the society. Though the society has issued notice to the petitioner asking him to deposit the due amount, the petitioner has not deposited the same. Even after the detailed inquiry, it transpired that an amount of Rs.9,64,236/- is due against the petitioner. Even the petitioner himself has withdrawn his objection raised in respect of deletion of his name in the provisional voters list. Respondent no.2, while disposing of the appeal, has observed that respondent no.5-society, right from 2014, has been insisting for conducting elections of the Managing Committee of the society. However, by order dated 11.08.2016, respondent no.3 has appointed the Administrator by discharging the Managing Committee. The respondent-society has published the final voters list within time and there is no substance in the observations made by respondent no.3 in the order dated 11.08.2016 that no final list of voters was published by respondent-society. It is thus clear that respondent no.3 has exercised powers under Section 77-A(1)(b) without any substance. I find no fault in the

impugned judgment and order passed by respondent no.2 herein.

Hence the following order:

ORDER

- I. Writ Petition No. 942 of 2017 is hereby dismissed.
No costs.
- II. Since the main Writ Petition is dismissed, nothing survives for consideration in Contempt Petition No. 540 of 2017 and the same is also dismissed.
- III. Pending Civil Application also stands disposed of.

(V. K. JADHAV, J.)

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