

UNREPORTED

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.12641 OF 2017

1. Haridas S/o Dattaram Chavan,
Age 62 years, Occ.Agril.,
R/o Gortha, Tq. Umari,
Dist.Nanded.

2. Madhavrao S/o Ganpati Salunke,
Age 53 years, Occ.Agril.,
R/o Pomnala, Tq. Bhokar,
District Nanded. ... Petitioners.

Versus

1. The State of Maharashtra,
through its Principal
Secretary, Department of
Co-operation, Marketing and
Textile, Mantralaya,
Mumbai.

2. Hon'ble Minister for
Cooperation, Marketing
and Textile, Maharashtra State,
Mantralaya, Mumbai.

3. The Director of Marketing
Textile Department, Maharashtra
State, Pune.

4. The Commissioner of
Cooperation and Registrar of
Cooperative Societies, Pune.

5. The Deputy Secretary,
Government of Maharashtra,
Mantralaya, Mumbai.

6. The Divisional Joint

Registrar, Cooperative
Societies, Latur.

7. The District Deputy
Registrar, Cooperative
Societies, Nanded.

8. The Assistant Registrar,
Cooperative Societies,
Umari, Tq. Umari, Dist.Nanded.

9. Umari Sahakari Ginning and
Pressing Sanstha Ltd., Umari,
Tq.Umari, Dist.Nanded,
through its Chairman/Manager. ... Respondents.

...
WITH
CIVIL APPLICATION NO.13981 OF 2017
IN
WRIT PETITION NO.12641 OF 2017

1. Attam S/o Dhumma Chavan
Age 53 years, Occ.Agriculture,
R/o Shirur Umri, Dist.Nanded.

2. Sheikh Babu S/o Sheikh Baser
Age 48 years, Occ.Agriculture,
R/o Shirur Umri, Dist.Nanded. ... Applicants.

Versus

1. The State of Maharashtra
through its Principal
Secretary, Department
of Cooperation, Marketing
and Textile, Mantralaya,
Mumbai.

2. Hon'ble Minister for
Cooperation, Marketing and
Textile, Maharashtra State,
Mnatralaya, Mumbai.

3. The Director of Marketing
Textile Department, Maharashtra

State, Pune.

4. The Commissioner of
Cooperation and Registrar
of Cooperative Societies,
Pune.

5. The Deputy Secretary,
Government of Maharashtra,
Mantralaya, Mumbai.

6. The Divisional Joint
Registrar, Cooperative Societies,
Latur.

7. The District Deputy Registrar,
Cooperative Societies, Nanded.

8. The Assistant Registrar,
Cooperative Societies, Umari,
Tq.Umari, Dist.Nanded.

9. Umari Sahakari Ginning
and Pressing Sanstha Ltd., Umari,
Tq.Umari, Dist.Nanded.
through its Chairman/Manager. ... Original
Respondents.

AND

10. Haridas S/o Dattaram Chavan,
AGE 62 years, Occ.Agril.,
R/o Gortha, Tq. Umari,
District Nanded.

11. Madhavrao S/o Ganpat Salunke,
AGE 53 years, Occ.Agril.,
R/o Pomnala, Tq.Bhokar,
District Nanded. ... Original
Petitioners.

...

Mr.Deelip Patil (Bankar), advocate for the
petitioners.
Mrs.M.A.Deshpande, Additional Government Pleader
for the State.
Mr.R.N.Dhorde, Senior advocate holding for

Mr.V.R.Dhorde, advocate for Respondent No.9.

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**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

**Reserved on: 26.04.2018.
Pronounced on: 04.05.2018.**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. The petitioners seek directions against the Respondents to follow the procedure prescribed in GR dated 3.1.2009 and to adhere to Section 79-A of the Maharashtra Cooperative Societies Act, 1960 in the event of sale or transfer of any movable/immovable property of Respondent No.9. The petitioners also seek directions against Respondent Nos.1 to 6 to direct Respondent No.9 to follow Section 79-A of the Maharashtra Cooperative Societies Act. The petitioners also seek direction against Respondent Nos.1 to 6 to take over the prime property of the Respondent No.9 society for public purposes in the event the General Body comes to the conclusion that the properties of Respondent No.9 are required to be sold. The petitioners further seek directions against Respondent No.9, not to sell the prime property

admeasuring 8 hectares 43 Are situate at Umari city of Respondent No.9.

2. The petitioners claim to be the members of Respondent No.9 Umari Sahakari Ginning and Pressing Society Ltd. Mr.Bankar Patil, learned counsel for petitioners submits that without there being any necessity, the Respondent No.9 have taken steps to sell prime land admeasuring 8 hectares 29 Are situated in the heart of Umari city having potential value of Rupees hundred crore, for throw away price of Rupees six crore. There are total 2098 members of Respondent No.9. The said action is prejudicial to all the members of Respondent No.9. The learned counsel submits that previously the permission sought by the Respondent No.9 to sell the said prime land was refused by the Respondent-authority. The Chairman of Respondent No.9 Society is managing the affairs of Respondent No.9 as its private institution. The area of operation of Respondent No.9 was curtailed to Umari Taluka only by the Chairman of Respondent No.9 without following procedure U/s 12-C of the Maharashtra Cooperative

Societies Act. The Chairman showed only 308 members. In fact, the Respondent No.9 Society has 2098 members and they have right to participate in the affairs of the Respondent No.9. The learned counsel submits that the GR dated 3.1.2009, issued by the Department of Cooperation, Marketing and Textile, Maharashtra State is required to be followed while disposing of the property of the Cooperative Society. The Respondent No.9 has given go-by to the procedure contemplated in the said GR and had issued advertisement calling tenders showing the valuation of the property at Rupees Six Crore. In fact, the potential value of said property is Rupees hundred crore. To substantiate his contention, the learned counsel sought to rely on the sale deeds of the plots in Umari Taluka. The learned counsel submits that the Respondent No.2 had initially stayed the process of the sale of the said property. The Respondent No.9 challenged the order of Respondent No.2 by filing Writ Petition No.10272/2017 before this Court. This Court did not grant any stay and asked the State authorities whether they are intending to act as

per Section 79-A of the MCS Act. Subsequently, the Respondent No.9 obtained the letter from the authority that the permission to sell is not required. The stay order was vacated.

3. The learned counsel submits that Section 79-A of the MCS Act, lays down a procedure to be adopted and followed. U/s 79-A of the MCS Act, the Government has power to give directions in the public interest and for the purposes of securing proper implementation of the cooperative production and other development programmes or to secure proper management of the business of the society or for preventing the affairs of the society being conducted in a manner detrimental to the interest of the members. The provisions of Section 79-A are not resorted to. The learned counsel submits that the Resolution passed to sell the property is itself illegal. The amendment to the byelaws of restricting the area of operation is also illegal. The same would not obliterate the rights of the members who are not residing in Umari Taluka. All the members are eligible to

participate in the affairs of the society. The action of Respondent No.9 is malafide. The Resolutions passed are illegal. The learned counsel submits that the amendment to the byelaws has been stayed by the competent authority. It is not necessary to sell such a huge property. Even the part of property would satisfy the purpose sought to be achieved. The learned counsel in alternate also submits that Government can take over the property for public purpose, such as Court, Police Station etc.

4. Mr.Dhorde, learned Senior counsel for Respondent No.9 submits that the petitioners have suppressed material facts from this Court. The petition is filed with an ulterior motive. The Respondent Society is registered on 21.1.1961 and is established in the business of Ginning and Pressing of Cotton purchased from its members who are agriculturists. Since 2006, the production activity of Respondent society is stopped as the old plant and machinery has become out-dated and lying idle. On 23.6.1999, the State Government issued notification published in the official

Gazette constituting new Umari Taluka. Initially Umari was included under Bhokar Taluka. On 30.11.2012, the Commissioner for Cooperation, Maharashtra State, Pune issued directions in view of 97th amendment to the Constitution of India, for amendment of the byelaws. In pursuance to the directions, the Special General Body Meeting was called on 26.4.2013. Notice was published in daily Godatir Samachar along with agenda on 19.4.2013. In the Special General Body Meeting held on 26.4.2013, Resolution came to be passed restricting the area of operation of Respondent No.9 Society only to Umari Taluka and the shares of the members who were from other Talukas were decided to be refunded. As per the new model byelaws, the amount towards the share had increased to Rs.100/- and accordingly it was decided to recover the same from its members. In view of the said Resolution, the present petitioner No.2 has the right only to take away his share amount and has no right to interfere in the working of Respondent No.9. The petitioner No.1 has paid the additional share amount and has accepted the Resolution. Thereafter, Respondent

No.9 made application U/s 13 of the MCS Act, to the Assistant Registrar, Cooperative Societies, seeking registration of amended byelaws. No complaint was received and on 3.7.2013, application was allowed granting registration of the amended byelaws. Thereafter on 29.9.2013, Annual General Body Meeting was held and it granted confirmation to the Minutes of Meeting dated 26.4.2013.

5. Learned Senior counsel submits that in May 2015, elections of Managing Committee were held. There were only 308 members from Umari Taluka, who had deposited the share amount and they were only included in the voters list. The petitioners did not raise any objection to the voters list. Learned Senior counsel submits that the Ginning and Pressing is closed since 2006. The machinery had become out-dated and is lying idle. The cotton could not be ginned. Lot of inconvenience was caused to the agriculturists, therefore, there was general demand from agriculturists to start the Mill. Accordingly, on 3.8.2015, Resolution was passed in the

Managing Committee Meeting to take steps for erection of new plant and machinery required for starting Ginning and Pressing Mill. It was further decided to make funds available by selling the part of the land owned by Respondent Society. The Annual General Body Meeting was called. Agenda for 55th Annual General Body Meeting was published in newspaper daily 'Prajawani'. Agenda includes subject of sale of lands for making funds available for purchase of new plant and machinery. No objection was even raised by the petitioners and on 30.9.2015, Resolution was passed in the Annual General Body Meeting to start functioning of Respondent No.9 by purchasing modern plant and machinery and to sell the land of Respondent No.9 to raise funds for purchase of modern plant and machinery. In pursuance of the Resolution dated 30.9.2015, passed in the General Body Meeting, proposal was submitted to Director of Textile, Maharashtra State, through proper channel. On 17.10.2016, the Director of Textile informed the Divisional Joint Registrar, Cooperative Societies, that there is no provision in the Act to give

permission for sale. The Society has right to sell the land and it is not necessary to take permission. Learned Senior Counsel relies on the judgment of the learned Single Judge of this Court in the case of **"Jaisingrao Ganpatrao Sasane and others Vs. State of Maharashtra and others"** reported in **1996 (1) ALL MR 105**. Learned Senior counsel refers to Section 36 of the MCS Act and submits that absolute power vest in the society to sell the property. The District Deputy Registrar also informed the Assistant Registrar that in view of Section 36 the power to sell the land is given to the society. The DDR directed to follow e-tender process. In view of letter by the authorities, the Managing Committee Meeting was held on 2.3.2013 and it was decided to take steps for sale of land by exercising powers U/s 36 of the MCS Act. It has also decided to follow e-tender process and also by giving advertisement in newspapers. Thereafter, e-tender notice was published on the web-site and in five newspapers , calling applications from public at large for sale of 8 hectares 29 Are land owned by Respondent No.9. Upset price was fixed at

Rs.6.50 crore as per the valuation report obtained from the approved Government valuer.

6. Learned Senior counsel submits that all sorts of objections are raised. The local MLA who has grudge against Chairman of Respondent No.9, with an ill intention made representation to the Hon'ble Minister to stay the process of sale. The Hon'ble Minister without authority granted stay to the sale. According to learned Senior counsel, the Writ Petition was filed by the Society, challenging the order of stay. Subsequently, on 28.9.2017, stay was vacated by the Hon'ble Minister. Learned Senior counsel submits that the appeal bearing No.135/2017 is filed U/s 152 of the MCS Act before the Divisional Joint Registrar, Cooperative Societies by other members challenging the registration of amendment of byelaws after four years. The present petitioners have also filed dispute No.78/2017 before Cooperative Court, Nanded, challenging the General Body Resolution dated 30.9.2015 belatedly.

7. Learned Senior counsel submits that after following due procedure, the decision is taken to sell the property. The petitioner No.1 did not remain present in the General Body Meeting nor raised any objection to the agenda and the Resolution at the appropriate time. The General Body has passed Resolution for taking steps in the interest of its members and the agriculturists thereby resolving to make funds available by selling the land for purchase of modern plant and machinery. There are various dues to be paid by the society, such as loan taken from Nanded DCC Bank, electricity dues. It is with malafide intention, the petitioners are acting against the interest of the society. The area of operation of Respondent No.9 is restricted only to Umari Taluka. The petitioner No.2 is from Bhokar Taluka and does not have any right to raise any objection.

8. Learned Senior counsel further submits that GR dated 3.1.2009, relied by the petitioner is not relevant. The said GR is applicable only to Cooperative Housing Societies and not the

Societies such as Respondent No.9. The Writ Petition deserves to be dismissed.

9. We have also heard learned Additional Government Pleader for the State.

10. Learned Additional Government Pleader submits that the Government approved valuer assessed the value of 8 hectares 29 Are sought to be sold and according to him its registered value is Rupees 3,31,60,000/- and assessed its value at Rupees six crore.

11. We have considered the submission canvassed by learned counsel for respective parties.

12. It would appear that the petitioners herein have also filed dispute U/s 91 of the MCS Act, bearing Dispute No.78/2017, challenging the Resolution dated 30.9.2017, passed by the General Body and the Resolution passed by the Managing Committee dated 2.3.2017. In the said dispute, present petitioners have also sought

relief restraining Respondent No.9 from selling the property i.e. land 8 hectares 29 Are of Umari city. Thereafter, amendment has also been carried out raising further contentions regarding the Resolutions passed in the General Body and the Managing Committee. The amendment is also allowed. Precisely, the action of Respondent No.9 in selling the writ land is assailed in the dispute. The dispute filed is prior in point of time than the present Writ Petition. The parties can raise all their contentions with regard to the Resolutions and the acts of Respondent No.9 in selling the property in the said dispute. The same prayer can not be considered in the present Writ Petition. Both the parties will have an opportunity to put forth their case in the said matter.

13. The amendment to the byelaws is also stayed by the appellate authority in appeal filed U/s 152 of the MCS Act. As the amendment to the byelaws itself is stayed, naturally, so long stay is in operation, the Respondent No.9 would not be in a position to sell the property. The

amendment to the byelaws is with regard to restricting its area of operation of Respondent No.9 limited to Umari Taluka and increasing the share capital. In case the appeal challenging the amendment to the byelaws is allowed then the scenario would change completely, of-course, the appellate authority will have to decide the said appeal on its own merits after considering contentions raised by the parties. This Court would not opine about the merits of the amendment of byelaws as the same is subjudice before the appellate authority.

14. The Resolutions to sell the properties are also subject matter before the Cooperative Court. The petitioners who have filed present Writ Petition are also the complainants in the dispute filed before the Cooperative Court U/s 91 of the MCS Act. The very same Resolution is subject matter of challenge, wherein decision is taken by the General Body and the Managing Committee for sale of the property. The same prayer could not have been agitated in the present Writ Petition. There is provision for

filing inter-locutory application before the appellate authority for seeking immediate relief. As such when the Cooperative Court is seized with the matter wherein Resolutions for sale of the property passed by Respondent No.9 are under challenge, it would be inappropriate for this Court to pass any orders with regard to the Resolutions and/or sale of the property.

15. So long as there is stay to the amended byelaws by the appellate authority, the Respondent No.9 can not proceed to sell property as much will depend upon the orders passed by the appellate authority with regard to the legality to the amendment. Respondent No.9 can not sell the property till the issue with regard to the amended byelaws is settled or till the time the prohibitory orders upon amendment to the byelaws are in force. Even otherwise, when the dispute is already filed challenging the Resolution for sale of the property and the Cooperative Court is seized with the matter, it would be inappropriate for this Court to pass any further orders with regard to the Resolutions.

16. The GR dated 3.1.2009, relied by the petitioners is issued with regard to Cooperative Housing Societies. The said Government Resolution would not apply to the Society like the Respondent No.9. The provisions of Section 79-A deals with a situation where the State Government is required to act on a report of the Registrar that in the public interest or for securing proper implementation of cooperative production and other development programmes approved or undertaken by Government or to secure proper management of the business of the society or preventing the affairs of the Society being conducted in a manner detrimental to the interest of the members the State Government may issue directions to the Societies from time to time. The procedure is laid down U/s 79-A to be adhered to. In the present case, there is no report of the Registrar. It is for the State Government on its satisfaction to issue directions. For the said purpose it is for the parties to approach the competent authority in that regard.

17. As the Resolutions of the Society to sell property is under challenge before the Cooperative Court and also the amendment to the byelaws is also under challenge before the appellate authority, it would not be appropriate to pass any further orders in the matter.

18. With these observations, the Writ Petition is disposed of. No costs.

19. In view of disposal of Writ Petition, the Civil Application also stands disposed of.

Sd/-

(A.M.DHAVAL, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

