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

WRIT PETITION NO. 14970 OF 2017

Karmaveer Shankarrao Kale Sahakari Sakhar Karkhana Ltd., Gautam Nagar, Post. Kolpewadi, Tq.Kopargaon, Dist.Ahmednagar and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr.R.N.Dhorde, Senior Counsel i/b Mr.V.R.Dhorde, Advocate for Petitioners
Mr.S.G.Karlekar, A.G.P. for Respondent Nos. 1 to 3
Respondent No.4 served

CORAM : S.V.GANGAPURWALA AND A.M.DHAVALE, JJ.

DATE: APRIL 10, 2018

PER COURT :

1. The Petitioners have assailed the notice issued under section 83 of the Maharashtra Co-operative Societies Act, 1960. Mr. Dhorde, learned senior counsel for the petitioners submits that the Special Auditor was appointed to enquire into the gift deed executed by Karkhana in favour of the Gautam education Society subsequently, named as Karmaveer Shankarrao Kale Education Society (hereinafter referred to as 'the Society'). The said enquiry was initiated

pursuant to the complaint received and the orders of the Commissioner (Sugar). The learned senior counsel submits that after following due procedure i.e. passing the resolution by Managing Committee and confirming the same by General Body, the Karkhana executed the gift deed in favour of the society. The land itself was purchased for the purpose of education. The sale deed by virtue of which the land is purchased itself states that it would be used for the purpose of educational Society. The learned senior counsel submits that even the non-agricultural permission was granted for the purpose of starting school in the year 1972. Initially, in the year 1975, the lease was granted for 99 years in favour of the Society. The objection arose on account of regulation of the A.I.C.T.E. to the effect that educational institution should own its land. In view of that, the lease deed was cancelled and gift deed was executed for 13 Hectors and 95R in favour of the Society. The Managing Committee meeting was held. The Commissioner of Sugar was informed about the transfer of the land of the Trust to the Society on 12.03.2013. Thereafter, on 27.04.2013, A.I.C.T.E. granted permission to start diploma courses for the year 2013-2014 and on 27.05.2013, the Director of Technical Education granted permission for Polytechnic course for the academic year 2013-2014. The General Body Meeting was convened and resolution No.11 dated 28.06.2013 was passed in giving sanction to transfer of land to the educational Trust. Thereafter, educational Trust made an application to transfer the remaining land required for polytechnic. On 09.09.2013, the Managing Committee passed resolution to transfer remaining land of 10 Hectors 4R and executed the gift deed. The Commissioner of Sugar was informed on 13.09.2013. The General Body Meeting on 27.09.2013, vide resolution No.12 gave sanction for transfer of the land by way of gift deed to the Society. The gift deed was executed on 07.10.2013. Two Managing Committee Members of the Karkhana were nominated on the Management of the Trust. They were accepted. Political rivals made frivolous complaints to the Commissioner of Sugar. The Special Auditor conducted enquiry and submitted the report. The enquiry report specifically spells out that there is no misappropriation and only irregularity inasmuch as permission from the Commissioner of Sugar is not obtained. According to the learned senior counsel, none of the provisions of the Co-operative Societies Act, nor by-laws nor any government resolution requires permission of the Commissioner of Sugar to transfer the land. The land is transferred by way of gift deed to the Trust. Initially, the lease deed were executed for a period of 99 years with twice renewal of 50 years. The lands which are transferred are meant for educational purpose. The purchase of the land itself specifies the said fact. The learned senior counsel then submits that the report of the Special Auditor is abundantly clear. The report nowhere castigates any of the members of the Karkhana. The transaction is ratified by the General Body. The Karkhana has every right to deal with the property. The learned senior counsel relies on the Judgment of the Single Judge of this court in the case of ***Shri Jaishingrao Ganpatrao Sasane Vs. State of Maharashtra*** reported in ***1996 (1) All M.R. 105.*** The learned Senior Counsel also relies on the Judgment of the Apex Court in the case of ***J. N. Chaudhary and others vs. State of Haryana and others*** reported in ***(2014) 11 Supreme Court Cases 249*** to submit that the elected member has got every right to take decisions. The autonomy is given under the Co-operative Societies Act. The learned senior counsel refers to Article 243 (2) of the Constitution. The learned senior counsel submits that the notice under section 83 is not based on any satisfaction. It is issued only on the basis of report of the Special Auditor and the report of the Special Auditor is self speaking.

2. Learned Additional Government Pleader submits that considering the transaction, there are financial irregularities, enquiry under section 83 was contemplated. The report of the Special Auditor is the basis for receiving notice under section 83 of the Maharashtra Co-operative Societies Act. The property has been transferred without any consideration to the educational Trust. All these aspects will have to be considered in an enquiry under section 83 of the Maharashtra Co-operative Societies Act. It is within the powers of the authority to direct the enquiry under section 83.

3. We have considered submissions canvassed by the learned counsel for the respective parties.

4. We specifically asked the learned Additional Government Pleader as to whether there is any provision, regulation or any circular requiring the permission of the Commissioner of Sugar for transfer of the property of the Karkhana. The learned Additional Government Pleader candidly accepted that no such provision exists.

5. Pursuant to the complaint received, the Commissioner

of Sugar had appointed Special Auditor to enquire and investigate about the transaction. The Special Auditor has submitted his report. The report read in its entirety clearly states that there is no financial irregularity. It only states technical irregularity inasmuch as permission from the Commissioner of Sugar is not obtained before transfer of the property.

6. As stated above, nothing has been pointed out to suggest that permission of the Commissioner of Sugar before transfer of the property is necessary.

7. The report does not lay down any such deviation which would require any enquiry. It has also been observed by the Special Auditor that General Body has accepted and has given sanction for the transfer of the land to the Society by way of gift. The decision which was taken by the Managing Committee has been approved by the General Body.

8. The notice under section 83 of the Maharashtra Co-operative Societies Act also states that the enquiry under section 83 is directed on the basis of the report of the Special Auditor. The report of the Special Auditor is abundantly clear and self speaking.

9. The Special Auditor in his report after enquiry has said that the necessary resolutions are passed by the Managing Committee and the General Body. It is also stated that clause 4(c) of the Lease Deed dated 16th August, 1975 has become redundant. All the resolutions are approved by the General Body. It further states that the Society is not private institution of Kale family. The Special Auditor has also refuted the allegations of the complainant that the education society is a private institution. The said observations of the Special Auditor are in para 2 of page 280. It also further states that for technical education and to to comply with the condition, the gift deeds are executed. The report further observes that the intention of the members is *bona fide* and meant for the upliftment of the members and their wards. The report in fact, is in favour of the members of the Karkhana.

10. As noted above, the only reason mentioned in the report is that permission of the Commissioner of Sugar before transfer of the land is not obtained. The said permission is nowhere shown to be required.

11. No doubt, this court would be slow in exercising its

jurisdiction while entertaining petition, challenging directions given under section 83 of the Maharashtra Co-operative Societies Act. Upon perusal of the notice, it transpires that only reasons for issuing notice is the irregularity shown by the Special Auditor in his report to the extent that the permission of the Commissioner of Sugar is not obtained.

12. As noted above, nothing is pointed out to show that before transfer of the property, permission of Commissioner of Sugar is necessary.

13. The very basis of the issuance of notice is erroneous. Notice as such is quashed and set aside.

14. It is made clear that the present order is limited to the extent of notice issued. There is no impediment for any further action to be taken by the Commissioner of Sugar/competent Authority if any illegality is pointed out.

15. The writ petition is allowed. No costs.

(A.M. DHAVALE, J.) **(S.V. GANGAPURWALA, J.)**

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