

1. Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CONTEMPT PETITION NO.78 OF 2015

WITH

CIVIL APPLICATION NO.15 OF 2016

WITH

CIVIL APPLICATION NO.16 OF 2016

WITH

CIVIL APPLICATION NO.49 OF 2016

WITH

CIVIL APPLICATION NO.50 OF 2016

WITH

CIVIL APPLICATION NO.13 OF 2017

Girishkumar Vasudevbbhai Pandya] Petitioner

Vs.

Sanjay alias Gulloo Amarnath and others.] Respondents

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Girishkumar Vasudevbbhai Pandya, Petitioner in person.

Mr. R.D. Soni i/b Danchamitia Kishore Chandra Karasandas, for Respondents No.1 to 6.

Mr. S. Vyas i/b Mansukhlal Hiralal & Co., for Respondents No.7 to 9.

Mr. Chinmay Gaonkar i/b Geeta Sareen, for Respondent No.11.

Ms. Tanaya Goswami, A.G.P, for Respondent No.12.

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CORAM : R.G. KETKAR, J.

DATE: 29TH NOVEMBER, 2018.

P.C.

Heard Girishkumar Vasudevbbhai Pandya, petitioner in person, Mr. Soni, learned Counsel for respondents No.1 to 6, Mr. Vyas, learned Counsel for respondents No.7 to 9, Mr. Gaonkar, learned Counsel for respondent No.11 and Ms. Goswami, learned A.G.P, for respondent No.12 at length.

2. This Contempt Petition alleges breach of the order dated 28th February, 2014 passed by Deputy Registrar Co-operative, R-N Ward, Mumbai (for short 'Registrar'). By that order, the Registrar, in exercise of powers under section 77 A of Maharashtra Co-operative Societies Act, 1960 (for short 'Act') has dissolved the existing Managing Committee of Shri Laxmi Apartment Co-operative Housing Society Limited (for short 'Society') and appointed members of the said society as Board of Administrators.

3. In support of this Petition, Mr. Pandya strenuously contended that the Registrar is a Court and, therefore, Contempt Petition alleging breach of the order passed by the Registrar is maintainable. In support of this proposition, he heavily relied upon the decision of **Thakur Jugal Kishore Sinha Vs. The Sitamarhi Central Co-operative Bank Ltd, AIR 1967 Supreme Court 1494** and in particular paragraphs 11, 20 and 21 thereof. In that case, the Apex Court after considering the provisions of Bihar and Orissa Co-operative Societies Act 1935 held that the Assistant Registrar was functioning as a Court in deciding the dispute between the bank, the appellant and Jagannath Jha. He, therefore, submitted that Contempt Petition alleging breach of order dated 28th February, 2014 passed by the Registrar is maintainable.

4. Mr. Pandya submitted that by order dated 28th February, 2014, the Registrar appointed three members of the Society as Board of Administrators. The Board of Administrators were appointed for carrying out day-to-day functioning of the Society. Instead of carrying out day-to-day functioning of the Society, they have taken policy decisions. In support of this submission, he invited my attention;

[1] notice dated 17th September, 2014 issued by Gaonkar & Co., Advocates and Solicitors on the basis of instructions

given by respondent No.10 and others for fixing joint meeting of the Society and Developers for proceeding further in the matter.

[2] notice dated 20th November, 2014 issued by Board of Administrators convening special general meeting on 24th November, 2014 for obtaining conveyance of the property in favour of the Society and for other legal matters.

[3] notice dated 12th January, 2015 issued by Board of Administrators convening special general meeting of members of the Society on 18th January, 2015 for discussing;

- (i) what action to be taken against those members who have not paid the monthly maintenance for more than six months to the Board of Administrators.
- (ii) expenses required to be incurred for repairs to be done for boring water and removing trees on the outer wall of the building.
- (iii) about appointment of a security personnel during day time.

5. Mr. Pandya also invited my attention to the notice dated 22nd December, 2013 convening meeting on 23rd December, 2013 for considering issue of removal of the Secretary Mr. Girish Pandya (petitioner herein) and Chairman Ashok Desai from the post on account of non co-operative attitude and arrogant behaviour.

6. In short, Mr. Pandya submitted that Board of Administrators had violated the order dated 28th February, 2014 passed by the Registrar with

impunity. The Board of Administrator was supposed to look after day-today functioning of the Society. Instead of carrying out day-today functioning of the Society, they have taken major policy decisions and thus, are liable to be proceeded under the Contempt of Courts Act, 1971.

7. On the other hand, Mr. Soni submitted that by order dated 28th February, 2014, Registrar dissolved the Managing Committee and appointed Board of Administrators. Subsequently, on 29th January, 2015, election was held and newly elected Managing Committee has taken charge and the said Committee is functioning till date. He further submitted that basically Contempt Petition is not maintainable. He, therefore, submitted that no action deserves to be taken under the Contempt of Courts Act, 1971.

8. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Before considering merits of the Contempt Petition, it is necessary to find out whether Deputy Registrar Co-operative Society, R-N-Ward Mumbai is a 'Court'. Whether the said Authority has trappings of the Court. As mentioned earlier, Deputy Registrar in exercise of powers under Section 77A of the Act has dissolved the then Managing Committee and appointed Board of Administrators. Section 77A contemplates appointment of member of committee, new committee, authorised officers, where there is failure to elect member, to constitute committee or where committee does not enter upon office, etc.

9. Mr. Pandya heavily relied on the decision of **Jugal Kishore** (supra). In that case, the Apex Court considered provisions of the Bihar and Orissa Co-operative Societies Act, 1935. In particular, the Court was considering the question whether under section 48 of that Act, Assistant Registrar exercises powers of a Civil Court and, therefore, the said Authority

has trappings of the Civil Court and consequently, contempt lies for breach of the order passed by the Assistant Registrar. In paragraph 8, the Apex Court referred to various disputes touching the business of the registered society which must be referred to the Registrar. Such disputes may be among members, past members, persons claiming through members, past members or deceased member and sureties of members, past members or deceased members, or between the society and any past or present officer, agent or servant of the society. Under sub-section (2), the Registrar may on receipt of such reference_

- (a) decide the dispute himself, or
- (b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf, or
- (c) subject to any rules, refer it for disposal to an arbitrator or arbitrators.

10. Under sub-section (3), the Registrar may withdraw any reference transferred under clause (b) of sub-section (2) or referred under clause (c) of the said sub-section and deal with it in the manner provided in the said sub-section. Under sub-section (6) any person aggrieved by any decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2) may appeal to the Registrar. Sub-section (7) gives the Registrar, in the case of dispute under this section, the power of review vested in a civil Court under section 114 r/w Order-XLVII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C') as also the inherent jurisdiction specified in section 151 of C.P.C. Sub section (8) gives the Registrar the power to state a case and refer it to the District Judge for decision whereupon the decision of the District Judge is to be final. Section 57 (1) provides that save in so far as expressly provided in the Act, no civil or revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up of dissolution of a registered society

under the Act, **or of any dispute required by section 48 to be referred to the Registrar or of any proceedings, under Chapter VII-A.**

11. After considering the scheme of the Act, in paragraph 11, the Apex Court observed that jurisdiction of the ordinary civil and revenue Courts of the land is ousted under section 57 of the Act in case of disputes which fell under section 48. After considering the various decisions, the Apex Court concluded that the Assistant Registrar was functioning as a Court in deciding the dispute between Bank, the appellant and Jagannath Jha.

12. Mr. Pandya heavily relied on paragraph 21 of this decision which holds that Assistant Registrar was a Court subordinate to the High Court. He submitted that decision of this Court in **Lakhama Pesha vs. Venkatrao Swamirao, AIR 1955 Bombay 103** was approved by the Apex Court.

13. As mentioned earlier, in the present case, in exercise of powers under section 77A of the Act, the Deputy Registrar after dissolving the existing Managing Committee, appointed three members of the Society as Board of Administrators. In my opinion, the Deputy Registrar cannot be equated with a Court and that the said Authority has trappings of the Court. So as to accept the submission of Mr. Pandya that Contempt Petition lies on account of breach of the order passed by the Deputy Registrar, in my opinion, the judgment of the Apex Court is not applicable to the facts of the present case as in that case under section 48, the Assistant Registrar was exercising powers of the Civil Court. Section 57 specifically excluded jurisdiction of Revenue and Civil Court in respect of the matters covered by section 48 of that Act. In view thereof, Contempt Petition is liable to be dismissed on the ground of maintainability.

14. Even otherwise on merits, I do not find that this is a fit case for initiating proceedings under the Contempt of Courts Act, 1971. As mentioned earlier on 29th January, 2015 election was held and newly elected Committee has taken over charge of the Society and is functioning till date. That apart, the steps taken by the Board of Administrator for redevelopment, for obtaining conveyance of the property in favour of the society, for recovery of maintenance charges and appointing security personnel were not detrimental to the interest of the society. In view thereof, no case is made out for initiating contempt proceedings against the respondents. Hence, Contempt Petition fails and the same is dismissed.

15. In view of dismissal of the Contempt Petition, Civil Application No.15 of 2016 for direction to respondents No.7 to 9 to furnish copy of the Conveyance executed at the instance of respondents No.7 to 9, Civil Application No.16 of 2016 for amending the Petition, Civil Application No.49 of 2016 for substituted service by affixing notice on the conspicuous place of respondents No.4,6,8,10 and 11 for amendment of flat No.10 and the correction of father's name of respondent No.11 and Civil Application No.50 of 2016 for mandatory order to respondent No.5 to furnish copy of conveyance to the petitioner and Civil Application No.13 of 2017 for direction do not survive and the same are accordingly disposed of. Order accordingly.

[R.G. KETKAR, J.]