

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***CIVIL APPELLATE JURISDICTION***  
**WRIT PETITION (ST) NO. 21307 OF 2018**

**Dimple Co-operative Housing  
Society Limited & Ors.**

**..... Petitioners**

**VERSUS**

**Divisional Joint Registrar & Ors.**

**..... Respondents**

Mr.Mayur Khandeparkar, i/b. Mr.Vijay D. Upadhyay for the  
Petitioners.

Mr.Surendra Sharma for the Respondent nos. 4 and 5.

Mr.Chirag Balsara, a/w. Ms.Leena Shah, i/b. Shah and Furia Associates  
for the Respondent no.6.

**CORAM : R.D. DHANUKA, J.**

**DATE : 8<sup>th</sup> AUGUST, 2018**

**P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the orders dated 2<sup>nd</sup> December 2016, 22<sup>nd</sup> December 2016 and 23<sup>rd</sup> May, 2018 in this petition.

2. The petitioner nos. 2 to 4 have been disqualified on the ground that the Annual General Body Meeting of the petitioner no.1 society for the year 2014-15 was not held within the time contemplated and was held along with Annual General Body Meeting for the year 2015-16.

3. The learned Deputy Registrar had appointed an officer for taking inspection of the records of the petitioner no.1 society and to submit a report. It is the case of the petitioners that the copy of the said report was not furnished to the petitioners and the authority however considered that report while passing an order of disqualification of the petitioner nos. 2 to 4 as members of the managing committee for the period of five years. The authorities have also appointed an administrator of the petitioner no.1 society.

4. Insofar as the issue as to whether the petitioner nos. 2 to 4 were justified in not holding the annual general meeting for the year 2014-15 within the time contemplated or not is concerned, Mr.Khandeparkar, learned counsel for the petitioners invited my attention to some of the grounds raised in the appeal filed by the petitioners in the revision application filed before the authority and would submit that due to various reasons and more particularly due to the Municipal Corporation having issued notices one after another under section 354 of the Bombay Municipal Corporation Act which were being defended by the petitioner nos. 2 to 4 and due to various unavoidable circumstances, there was delay in holding annual general meeting for the year 2014-15.

5. It is submitted by the learned counsel that neither a copy of the report which is relied upon by the authorities submitted by the learned officer is furnished to the petitioners nor various other grounds raised by the petitioners in the revision application have been considered by the authority while dismissing the revision application filed by the

petitioners.

6. It is submitted by the learned counsel that insofar as holding of election for the post of managing committee for the petitioner no.1 is concerned, the petitioners have no objection if the election for the post of managing committee is held through the administrator.

7. It is however submitted that in view of the building of the petitioner no.1 having been declared as dilapidated by the Municipal Corporation, the petitioners have already entered into a development agreement with the respondent no.6 by passing a resolution in the Special General Body Meeting of the petitioner no.1 held on 6<sup>th</sup> May, 2018. A copy of such development agreement dated 14<sup>th</sup> May, 2018 is annexed to the compilation. He submits that since the development agreement could not be registered in view of the orders passed by the authorities against the petitioners, the learned administrator or the petitioner nos. 2 to 4 be permitted to get the said development agreement entered into with the respondent no.6 registered to enable the said developer to implement the said development agreement and to take further steps at the earliest in view of the dilapidated condition of the building of the petitioner no.1.

8. The next submission of Mr.Khandeparkar, learned counsel for the petitioner is that the respondent nos. 4 and 5 are defaulters and thus could not have filed any complaint against the petitioners at the first instance. In support of this submission, learned counsel placed reliance on the circular issued by the State Government.

9. Mr.Balsara, learned counsel for the respondent no.6 invited my attention to the minutes of the Special General Body Meeting held on 6<sup>th</sup> May,2018 and also the development agreement. He submits that out of 28 members of the petitioner no.1 society, 17 members were present. About 24 members out of 28 members have already filed consent letter in favour of the respondent no.6 and 23 members have already executed consent affidavits.

10. Learned counsel appearing for the respondent nos. 4 and 5 on the other hand submits that the authorities were justified in appointing an administrator and disqualifying the petitioner nos. 2 to 4 from contesting the election for the next five years. He submits that the members of the committee of the petitioner no.1 had committed several acts prejudicial to the interest of the society and thus no interference is warranted with the impugned order. He however submits that his clients have no objection if the election of the managing committee is held by the administrator appointed by the authority. He submits that however this court shall not interfere with the order of disqualification passed against the petitioner nos. 2 to 4.

11. Insofar as the resolution dated 6<sup>th</sup> May, 2018 passed by the Special General Body Meeting of the petitioner society is concerned, it is submitted by the learned counsel that the said meeting was illegal. He submits that one of his client was in hospital and thus could not remain present in the said meeting.

12. Insofar as the issue as to whether respondent nos. 4 and 5 are defaulters and thus could not have filed any complaint in view of the Government circular is concerned, learned counsel submits that not only the respondent nos. 4 and 5 are defaulters, but there are other 18 members who are also defaulters and thus the complaint was maintainable.

13. Insofar as the disqualification of the petitioner nos. 2 to 4 is concerned, I have perused the records annexed by the petitioners to the petition as well as to the compilation. A perusal of the record clearly indicates that the Municipal Corporation of Greater Mumbai had issued two notices, one on 24<sup>th</sup> May, 2015 and another on 25<sup>th</sup> June, 2015 under section 354 of the Mumbai Municipal Corporation Act. The Corporation also issued notice of eviction on 29<sup>th</sup> June, 2015. As on today, water connection of the society is already disconnected.

14. I am thus inclined to accept the submissions of the learned counsel for the petitioners that in view of various eviction notices as well as the evacuation notice issued by the Municipal Corporation, the petitioner nos. 2 to 4 could not hold Annual General Body Meeting held Annual General Body Meeting for the year 2014-15 within the time contemplated and were justified in holding Annual General Body meeting for the year 2015-16. The petitioner nos. 2 to 4 thus could not have been disqualified as members of the managing committee for the five years by the authority.

15. Insofar as holding of the election for the post of managing committee is concerned, the petitioners as well as the respondent nos. 4 and 5 are agreeable to have election of the managing committee through the administrator appointed by the authority.

16. The learned administrator is therefore directed to hold election in accordance with the Maharashtra Co-operative Societies Rules, 1961 within the a period of eight weeks from today. In view of the fact that this court has set aside the order of disqualification, the petitioner nos. 2 to 4 also will be allowed to participate in the election process and to contest the election for the post of managing committee.

17. In my view, at the first instance the complaint filed by the respondent nos. 4 and 5 could not have been entertained at all by the authority in view of the fact that admittedly, respondent nos. 4 and 5 are defaulters in making payment of the outgoings of the petitioner no.1 society. Learned counsel appearing for the respondent nos. 4 and 5 at the first instance made a grievance before this court that the petitioner no.1 society is not accepting the maintenance amount from his clients. Though this court repeatedly called upon the learned counsel to ask his clients as to whether they will make payment of maintenance charges to the petitioner no.1 society, the respondent nos. 4 and 5 have refused to pay any maintenance charges to the petitioner no.1 on the ground that there are several other defaulters like them in not making payment of the maintenance charges. In my view, the complaint filed by the respondent nos. 4 and 5 against the managing committee members thus was not maintainable and even otherwise was

devoid of merit.

18. Insofar as submission of the learned counsel for the respondent nos. 4 and 5 that the resolution passed by the Special General Body Meeting held on 6<sup>th</sup> May, 2018 is illegal is concerned, learned counsel for the respondent nos. 4 and 5 does not dispute that notice of such meeting was received by this clients.

19. Be that as it may, the resolution passed by the Special General Body Meeting of the petitioner no.1 society has not been impugned by the respondent nos.4 and 5 or by any other member by filing a dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960 and thus the validity thereof cannot be challenged by the respondent nos. 4 and 5 before this court in this writ petition filed by the petitioners. The said resolution thus passed by the Special General Body Meeting is binding on all the members including the respondent nos. 4 and 5.

20. In view of the extreme urgency and more particularly that the building of the petitioner no.1 is in dilapidated condition and is required to be redeveloped at the earliest, the petitioner no.1 society is justified in appointing a developer and to execute a development agreement with the respondent no.6 on 4<sup>th</sup> May, 2016. The said development agreement however could not be registered in view of the various orders passed by the authority.

21. I am thus inclined to permit the petitioner nos. 2 to 4 to register the said development agreement entered with the respondent no.6 on 14<sup>th</sup> May, 2018. Such procedure shall be completed within two weeks from today.

22. Till the fresh election is held by the administrator appointed by the authority, the petitioner nos. 2 to 4 will be allowed to continue to act as managing committee members. However they shall not take any policy decision till fresh election is held.

23. Impugned orders dated 2<sup>nd</sup> December 2016, 22<sup>nd</sup> December 2016 and 23<sup>rd</sup> May, 2018 are accordingly quashed and set aside. Writ petition is made absolute in the aforesaid terms.

24. The parties to act on the authenticated copy of this order.

25. Since the respondent nos. 4 and 5 are the defaulters, the petitioner no.1 is at liberty to take appropriate steps against the respondent nos. 4 and 5 for recovery of the dues of the society.

**[R.D. DHANUKA, J.]**