

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 9685 OF 2018

Mr. Anwar Khan & Ors.

... **Petitioners**

V/s.

State of Maharashtra & Ors.

... **Respondents**

Mr. Rajesh Bhosle for the Petitioners.
Mr. B. Reis a/w Mr. Shailesh Rai for the Respondent No.5.
Mr. Deelip Patil Bankar Chief Standing Counsel for Respondent No.6.
Mr. P.S. Pawar, Authorised Officer, present.

**CORAM : R.M.SAVANT, &
N.J.JAMADAR, JJ.**

DATE : 30TH NOVEMBER 2018

PC:

1. The above Writ Petition has been filed challenging the Order dated 23rd March 2018 passed in Appeal No. 45 of 2018 by the Divisional Joint Registrar, Co-operative Societies, Mumbai, by which the stay sought by the Appellant therein i.e. Petitioner herein against the order dated 08th February 2018 passed by the Deputy Registrar, Co-operative Societies, K/W Ward, Mumbai under Section 77A(1)(b-1)) of the MCS Act, 1960 came to be rejected. The said stay came to be rejected for the reasons mentioned in the said order which principally

revolves around the fact that the tenure of the Managing Committee has already come to end on 14th October 2017.

2. The Petitioner also challenges the Order dated 31st July 2018, by which Revisional Authority also refused to grant stay in the Revision filed by the Petitioner against the said Order dated 23rd March 2018 passed by the Appellate Authority. The provisions of Section 77A can be invoked in the multifarious circumstances mentioned in the said provision. One of the circumstances in which the said provision can be invoked is when the tenure of the Managing Committee has come to an end or that the Managing Committee ceases to function. It is not necessary for us to go into the said aspect as the Petitioners have approached this Court in view of the refusal of stay by the Appellate Authority i.e. Divisional Joint Registrar and by the Revisionary Authority i.e. State Government. It seems that contemporaneously an Order under Section 80 of the Maharashtra Co-operative Societies Act also came to be passed in view of the fact that the Petitioners who are erstwhile Managing Committee members were refusing to handover the record of the society to the Authorised Officer.

3. The above Petition had come up for admission before a Division Bench of this Court [K.K. Tated and N.J. Jamadar, JJ]. On the said day the following statement came to be recorded.

“ that the Dy. Registrar shall inform the Petitioner the documents which they require for holding the election, within a week. If the information is furnished to the Dy. Registrar, he is directed to comply with the same, immediately thereafter.”

4. The Petition thereafter came up before this Bench on 26th November 2018 on which day a statement came to be made on behalf of the Petitioner that the record would be handed over to the Authorised Officer which statement we accepted and accordingly deferred the hearing of the above Writ Petition to 28th November 2018. On 28th November 2018, we were informed by the learned AGP that the record has been handed over except a few documents which were not handed over. The office premises have been locked by the Petitioners by putting their own lock on the outer door of the office premises. It has been recorded in the order passed on the said day that the cupboard in which the record lies has been sealed by the Authorised Officer. On the said day, a further statement came to be made by the learned Counsel appearing on behalf of the Petitioner that the key to the lock on the outer door to the office would be handed over to the Authorised Officer.

5. Today we are informed that the key has infact been handed over

to the Authorised Officer and that the Authorised Officer has now put his own lock on the outer door of the office of the society. Hence, the status as of date is that the record of the society is in possession of the Authorised Officer subject to deficiency in the said record, if any as also the door lock bears the lock of the Authorised Officer. We therefore inquired from the learned Counsel Mr. Patil for the State as to the time within which the election can be conducted by the State Election Authority i.e. Respondent No.6 herein. The learned Counsel Mr. Patil states that the preparation of the voters list would take about 2 months and thereafter the Election programme would have to be announced as per the schedule prescribed for the class of society to which the society in question belongs. We expect that the process of holding elections would be completed expeditiously.

6. Since, the order passed under Section 80 is the subject matter of Writ Petition (L) No. 1383 of 2018, before a learned Single Judge of this Court it would be before the learned Single Judge that the issue about operation of the Bank account by the Authorised Officer would have to be taken up. Since the tenure of the Managing Committee is over and the authorised officer has now been handed over the record, we direct that the Authorised Officer would retain the record and would be responsible for carrying out the day to day affairs of the

society subject to the orders that would be passed by the learned Single Judge in the said Writ Petition (L) No. 1383 of 2018 as regards operation of the bank account.

7. The Authorised Officer would also prepare the provisional voters list on the basis of the record and submit to the Deputy Registrar of the Co-operative Societies in terms of the statement made by the learned Counsel.

8. Since our instant order impacts the Appeal pending before the Divisional Joint Registrar as well as the Revision pending before the State Government, the Revision filed before the State Government as well as the Appeal filed before the Divisional Joint Registrar have turned infructuos. The said authorities would accordingly pass appropriate orders in the said proceedings.

9. With the directions as aforesaid, the above Writ Petition is disposed of.

(N.J.JAMADAR, J.)

(R.M.SAVANT, J.)