

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.2855 OF 2008**

Vipul Dharod ...Petitioner
vs
State of Maharashtra And Others ...Respondents

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Mr. Vipul Dharod, Petitioner present in person.

Mr. Milind More, Additional G.P., for State/Respondent Nos. 1, 3 and 4.

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CORAM : S.C. GUPTE, J.

DATED : 6 APRIL, 2018

P.C. :

. Heard the Petitioner, who appears in person and the learned Additional Government Pleader for the State.

2. This petition challenges an order of expulsion passed by the 5th Respondent Society against the Petitioner, and which order has since been confirmed by the authorities below. The Petitioner was a member of Respondent No.5 society. The society is an open plot and tenant co-partnership society. The Petitioner has been member of this society since 9 July 1980. By a purported resolution passed by the general body of the society on 5 November 2005, the Petitioner was expelled from the society. An application was, thereafter, moved by the society under Section 35 of the Maharashtra Co-operative Societies Act for approval by the Registrar. At that stage, the application was contested by the Petitioner on notice. By his impugned order dated 22 February 2006,

Assistant Registrar of Co-preparative Societies approved the resolution passed by the society on 5 November 2005 expelling the Petitioner. This order was challenged by the Petitioner before Divisional Joint Registrar of Co-Operative Societies, who, by his order dated 2 January 2007, rejected the appeal. The Petitioner, thereafter, preferred a revision before the Minister of Cooperation, State of Maharashtra. By his order dated 19 March 2008, the Hon'ble Minister rejected the Petitioner's revision. The orders of the original authority under Section 35 of the Act and the Appellate and Revisional authorities are challenged in the present petition. The challenge is mainly on the ground that neither was the Petitioner given notice of the general body meeting, when the resolution expelling him was passed, nor was he given an opportunity to represent his case before the general body at any stage. It is submitted that the procedure prescribed under Rules 28 and 29 of Maharashtra Co-operative Societies Rules was also not followed by the society before passing the impugned resolution.

3. The society itself is not present before the Court to show cause. The State is represented through the Additional Government Pleader.

4. It is apparent from the record of the case and the documents produced before this Court that the notice of the meeting, where the proposed resolution for expulsion of the Petitioner was to be passed, was addressed to the Petitioner at an incomplete address. It is also on record that this notice could not be served on the Petitioner and the packet of service was returned by the couriers with a remark which suggests that

the address was incomplete and, hence, service could not be effected. In spite of this clear record being produced before the authorities below, the authorities have proceeded on the footing that the mandate of Section 35 insofar as the mandatory notice and opportunity to show cause to the member proposed to be expelled are concerned, was satisfied in the present case. The orders are clearly unsustainable. Expulsion of a member from a tenant co-partnership society has vital implications concerning the proprietary rights of the member. It is absolutely imperative in a case of expulsion under Section 35 that the member proposed to be expelled must be given a notice of a duly proposed meeting of the general body of the society. This meeting itself has to be held in accordance with the provisions contained in Rules 28 and 29 of Maharashtra Co-Operative Society Rules. In pursuance of such notice, an adequate opportunity of hearing must be given to the member before any resolution of expulsion is passed. The mandate of this statutory provision is clearly not fulfilled in the present case and the authorities below have erred in not recognizing this.

5. In the premises, the petition is allowed by making Rule absolute and quashing and setting aside the impugned orders of the authorities referred to in prayer clause (a) of the petition. Respondent No.5 society is directed to reinstate the name of the Petitioner in the records of the society and to issue a share certificate to the Petitioner.

6. The Petitioner has prayed for various other reliefs in the petition based on events, which have transpired after he was expelled from the membership of the society. Strictly speaking, these subsequent

events, in which various third party rights appear to have been created in favour of several individuals by the society, are not the subject matter of the present petition. The Petitioner does not dispute that as of today the entire development potential of the plot owned by the society stands exploited and all flats constructed in six wings of the society have been occupied by third parties, though, according to the Petitioner, some of these third parties are not members of the society. None of these third parties are before the Court. The dispute concerning the flats allotted to these third parties was not raised before any lower authority and does not form part of the challenge in the present petition. In the premises, no further relief can be granted to the Petitioner in the present petition. It is, however, clarified that the Petitioner will have the liberty to agitate his grievance as a result of restoration of his membership of the society as per his original seniority by this order. The Petitioner is entitled to be treated as a member of the society ever since inception, that is to say, since 9 July 1980, and accorded benefits, as may be available to him in law, on that basis.

(S.C. GUPTE, J.)