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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.197 OF 2018

Sachin C. Sheth And 9 Ors.

...Petitioners

vs

State of Maharashtra Through The Hon'ble
Minister Co-Operation Department And Ors.

...Respondents

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Dr. Birendra Saraf, a/w. Mr. Gautam Ankhad, Ms. Pooja Kothari and Ms.
Ashna Contractor, i/b. Federal & Rashmikan, for the Petitioners.

Mr. H.B. Takke, AGP, for Respondent No.1.

Mr. Vineet Naik, Senior Advocate, a/w. Mr. Shardul Singh and Mr.
Sukand Kulkarni, i/b. Robin Gero, for Respondent Nos. 4 to 8.

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CORAM : S.C. GUPTE, J.

DATED : 3 APRIL, 2018

P.C. :

. Heard. Rule. The matter is taken up for hearing forthwith by consent of Counsel. The subject matter of controversy in the present petition concerns the order passed by the Hon'ble Minister of Cooperation on 6 December 2017. On a complaint made by Respondent Nos. 4 to 8 herein for disqualification of the Committee of Petitioner No.10 Co-operative Housing Society, the Deputy Registrar of Co-operative Societies issued a show cause notice and, thereafter, passed an order disqualifying Petitioner Nos. 1 to 9 as members of the managing committee of the society. This order was challenged by the Petitioners

in an appeal before the Divisional Joint Registrar, who set aside the impugned order of the Deputy Registrar. The matter was carried thereafter in a revision before the Hon'ble Minister for Cooperation by Respondent Nos. 4 to 8. The Hon'ble Minister, by his impugned order, set aside the order of Divisional Joint Registrar and restored the order of the Deputy Registrar disqualifying the Petitioners as members of the Managing Committee of the Society. That order is challenged in the present writ petition.

2. The genesis of the dispute between the parties, and which is made the basis of the complaint on which the impugned orders came to be passed, is certain resolutions passed by the general body of Petitioner No.10 Society seeking to recover charges (under different nomenclatures) for transfer of membership and admission of new members. In or about 2015, two individuals, one Rikhav Shah and Rushabh Shah, objected to the levy of these charges. The Shahs refused to pay the charges claimed by the Society and instead applied for deemed membership of the society under Section 23 of the Maharashtra Co-Operative Societies Act ("Act"). Deputy Registrar of Co-Operative Societies passed an order accepting their membership. Joint Divisional Registrar of Co-Operative Societies confirmed this order in appeal. This order finally came to be enforced under sub-section (2) of Section 79 by the Registrar through an authorized person. The society's justification for non-compliance with the order of deemed membership was that the society was in the process of preparation of a writ petition challenging the impugned orders of the Deputy and Joint Divisional Registrars. This petition, which in fact came to be filed subsequently, has since been

withdrawn by the society. In the meantime, as noticed above, in pursuance of the action under sub-section (2) of Section 79, the Shahs were made members of the Petitioner Society. That was on 2 August 2016. Thereafter, sometime in September 2016, there was once again a dispute between the Shahs and the society concerning repairs proposed to be carried out by Shahs in their flat. The same was carried by the Shahs before the Co-operative Court in a dispute under Section 91 of the Act. On 20 September 2016, an FIR also came to be filed by Shahs in connection with a purported high handed action on the part of the society arising out of that dispute. The FIR was followed by a direction from the Deputy Registrar on 22 September 2016, directing the society not to obstruct the work being carried out by the Shahs in the circumstances stated therein. The matter was, thereafter, resolved between the Shahs and the society and letters were addressed by them separately to Deputy Registrar of Co-Operative Societies and Malabar Hill Police Station on 22 September 2016. By these letters, the Shahs informed the Deputy Registrar and the Officer In charge of the Police Station that the matters between themselves and the society had been amicably resolved. The Shahs requested the Officer In charge of the Police Station to treat their complaint as withdrawn and closed. The society, thereafter, by its letter dated 3 October 2016, gave its permission to the Shahs for carrying out the repair and renovation work in their flat. In pursuance of this, the Shahs addressed a letter on 5 October 2016 to all members of the society that matters had been resolved amicably and there was no dispute with the society and thanking the members of the managing committee and well wishers for the same. On 14 October 2016, consent terms were entered into between the Shahs and the

society in their dispute before the Co-Operative Court, accepting the work permission given by the society and agreeing to withdraw by writing suitable letters to all authorities their grievance and complaints in view of the settlement arrived at between the parties. The Shahs, thereafter, also addressed a letter to the society of the same date (i.e. 14 October 2016), reaffirming the settlement and assuring their co-operation to enable the society to get the FIR quashed. After a quietus was thus given to the entire dispute between the parties, the same issue appears to have been raked up by Respondent Nos. 4 to 8 herein in their complaint before the Deputy Registrar of Cooperative Societies.

3. It is pertinent to note that this complaint is made within three days of quietus being given to the dispute between the Shahs and the society and the parties having filed consent terms and the former having addressed letters to various authorities in response thereto. If one has regard to this complaint, it mainly proceeds on the ground that the society had failed to accept the Shahs as members of the society. The complaint narrates the various stages of the earlier dispute between the Shahs and the society leading up to the order passed by the Deputy Registrar under sub-section (2) of Section 79 of the Act. The complaint, thereafter, refers the issue of repair work proposed by the Shahs leading up to the filing of the F.I.R. by the Shahs against the society. Apart from the specific instance of the Shahs, there are only some general allegations contained in the complaint concerning (i) the committee allegedly demanding excess amount from the members for giving NOC to give flats on leave and licence basis (ii) expiry of the licence of the fire consultant of the society and (iii) appointment of an expert director (who was

appointed with permission from the Deputy Registrar of Co-operative Societies). The Deputy Registrar of Co-Operative Societies, in his order on this complaint passed on 16 December 2016, rendered a finding that in spite of being directed under Section 79 (2) of the Act to implement the order admitting the Shahs to the membership of the Society under Section 23(2) of the Act within a period of 15 days, the Society did not accept Shahs as members, but an order had to be passed by the Registrar for carrying out the order of deemed membership under sub-section (2) of Section 79 and that too, after the Shahs were made to make a voluntary donation of Rs.15 lakhs to the society. It is clear from the findings recorded by the Deputy Register that the findings essentially pertain to the matter of the Shahs. The matter of Shahs was given a quietus by the parties by accepting a settlement and finally, entering into consent terms and offering to withdraw the complaint made to the police. Once this was done and the matter was resolved, there was no further occasion for the Deputy Register to visit the members of the managing committee of the society with an order of disqualification on the very same ground, though at the instance of some other members. The impugned order of the Deputy Registrar was, in the premises, rightly set aside by the Joint Divisional Registrar of Co-Operative Societies in his appellate jurisdiction. The order has been revived and restored by the Hon'ble Minister of Cooperation in his impugned order once again on the same ground that the society had failed to implement the order passed by the Registrar under sub-section (2) of Section 79.

4. The impugned order cannot be sustained in law. The disputes between the Shahs and the society were given a quietus by the

parties by finally entering into consent terms and resolving the matters amicably. No doubt the society did not initially implement the orders of the co-operative authorities passed under Section 23 in case of Shahs, but then the matter did not rest at the appellate order of the Joint Divisional Registrar but was, in fact, carried by the society before this Court in a writ petition. During the pendency of this petition, all disputes between the parties were amicably resolved. Shahs entered into consent terms with the society, and addressed letters to the society members and all other authorities withdrawing their complaint and the society, in turn, withdrew its writ petition filed before this Court. After quietus was thus given to the entire dispute, the same controversy cannot be raked up in a complaint under Section 73CA and that too at the instance of other members, and in response, the Co-operative authorities cannot disqualify the members of the managing committee.

5. Mr. Naik, learned Senior Counsel appearing for Respondent Nos. 4 to 8, tried to justify the impugned orders of the Minister of Co-operation and the Deputy Registrar of Co-operative Societies on the ground that the complaint was essentially in connection with unauthorized charges collected by the society and the dispute concerning the Shahs was only an instance of such unauthorized recovery. I am afraid that is not how the authorities below have looked at the matter. The authorities have, in their impugned order, purely proceeded on the basis that despite the co-operative authorities having passed orders directing the society to admit the Shahs as their members, the orders were not implemented and ultimately had to be enforced under sub-section 2 of Section 79 of the Act, and thus, a case was made out for

acting under Section 73CA.

6. Mr. Naik further submits that, in any event, the Shahs have not really accepted the settlement and have, in fact, addressed a letter on 2 August 2017 to Malabar Hill Police Station withdrawing their earlier letters addressed to the Police Station and the Society. It is immaterial how the Shahs now respond to the controversy. It is beyond dispute that the entire controversy was given a final quietus with consent terms being filed between the parties and letters were addressed by the Shahs on the basis thereof to the society and the concerned authorities. In any event, the letter of 2 August 2017 has been addressed by the Shahs after the hearing before the Hon'ble Minister was closed for orders. This letter was not considered, or made the basis of his order, by the Hon'ble Minister. It is also important to note that by a general body resolution passed on 14 May 2018, the resolution seeking to recover transfer charges has been revoked by the society.

7. In the premises, the impugned order of the Hon'ble Minister cannot be sustained. Accordingly, Rule is made absolute and the impugned order of the Minister of Cooperation dated 6 December 2017 is quashed and set aside.

8. Before I close, I must make it clear that the impugned order of the Hon'ble Minister is set aside solely on the ground that it is passed on a dispute, which had since been settled between the parties. That dispute concerned the individual case of the Shahs with respect to their membership as well as the repairs then proposed to their flat. In case

any other member has any similar grievance against the society or its managing committee and if any proceedings are adopted for redressal of that grievance, this order shall not come in the way of any such application.

(S.C. GUPTE, J.)