

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7196 OF 2019

**BHAGIRATH SAHAKARI GRUHA NIRMAN SANSTHA LTD
THROUGH SECRETARY
VERSUS
THE DIVISIONAL JOINT REGISTRAR CO OPERATIVE
SOCIETIES AURANGABAD AND OTHERS**

...

Advocate for the Petitioner : Shri K. J. Suryawanshi
AGP for Respondent Nos. 1 to 3 : Shri S. PTiwari
Advocate for Respondent No. 4 : Shri P.D. Suryawanshi

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th JUNE, 2019.

...

PER COURT :

1. On 17/06/2019, I had passed the following order :-

"1. The petitioner society is aggrieved by the order dated 29/05/2019 passed by the Divisional Joint Registrar Co-operative Societies, Aurangabad declining interim protection to the petitioner in Appeal No. 43/2018.

2. I have heard the learned Advocate for the petitioner and the learned AGP on behalf of respondent Nos.1, 2 and 3.

3. It appears from Section 77A (1) that the Registrar can appoint a member of a committee or new committee

or authorized officer as an authorized officer on a cooperative society. Since it was alleged that the petitioner is not holding elections and had not submitted the voters' list, an authorized officer was appointed on 14/11/2017. Sub-section 3 permits such an authorized officer to hold office for a period of six months from the date of assuming the charge and make necessary arrangements for constituting a new committee within the said period so as to have a legally elected committee. The proviso to Sub section 3 mandates that "in no circumstances, the term of office of the committee or authorized officer shall exceed six months from the date of their holding office".

4. *The learned AGP submits that he would take instructions.*

5. *The learned Advocate for the petitioner submits that the voters' list alongwith a Demand Draft as expenses for holding elections, have already been submitted to the competent authority on 02/07/2018.*

6. *Stand over to 25/06/2019 for "passing orders".*

2. This matter was heard for quite some time on 25/06/2019 and today. After noting the strenuous submissions of the litigating sides, it has now appeared that each litigating

side in this petition is interested in having elections for the petitioner society which is a Gruh Nirman Sanstha. It also appears that the owners of Flat Nos. 110 and 308 have not been mentioned in the voters' list that was tendered by the petitioner Secretary to the authorized officer alongwith the demand draft on 02/07/2018.

3. The learned Advocate for the petitioner society makes a solemn statement on instructions that the common electricity charges, the water charges and the monthly wages of the watchman guarding the property of the society have not been paid by the society. He clarifies that as the authorized officer has been appointed, the secretary cannot administer the society and the authorized officer will have to make the payments.

4. The learned AGP appearing on behalf of the authorized officer has submitted at length the difficulties faced by him and the difficulties created by certain persons due to which he was initially unable to take charge and subsequently had to take the police aid for collecting the documents of the society in

order to administer the society. He clarifies that now all these aspects need not be gone into, keeping in view that the parties have arrived at a consensus that the elections should be held expeditiously.

5. The learned Advocates for the respective sides joined the learned AGP and State that all the allegations between the parties are withdrawn and 'bygones be bygones'.

6. In view of the above, this petition is disposed off with the following directions :-

(a) The authorized officer/ respondent No.3 herein shall take steps to assess the unpaid electricity, water and watchman charges.

(b) The authorized Officer is permitted to open the seal that he had placed on the lock and on the office of the society in the presence of the petitioner secretary and respondent No.4, on 01/07/2019 at 10.30 a.m.

(c) The petitioner and respondent No.4 shall cooperate and shall not create any hurdle or impediment for the opening of the lock and the seal. If respondent No. 3 notices that either of

the two or anybody is creating any hurdle, he would be at liberty to register an FIR against the said persons before the concerned Police Station and is also permitted to file contempt proceedings in this Court for the conduct of either of the parties.

(d) After perusing the accounts of the society and available funds in the society's bank account, the authorized officer shall make the payments of unpaid charges noted above on or before 15/07/2019 and place the receipts on record of the society.

(e) If the authorized officer finds that there are insufficient funds for making such payments and since these are common charges to be borne by all the flat owners, he would declare an equated/proportionate share of each flat owner and would circulate a notice to all the flat owners for making the said contribution which shall be made to the authorized officer by them, within 3 days of the receipt of the notice. In the event, any flat is locked, the authorized officer shall paste the notice on the front door of the said flat. If any flat owner creates any hurdle or impediment, the authorized officer shall register a crime against him by lodging an FIR with the concerned police

station.

(f) The entire above exercise should be completed on or before 31/07/2019.

(g) The authorized officer shall follow the voters' list tendered by the petitioner secretary on 02/07/2019 and would also include the flat owners of flat Nos. 110 and 308 in the said list.

(h) He would publish an election programme by notice calling for a general body meeting for holding the elections, with 14 clear days notice to the flat owners. This notice shall be published on the notice board of the society which shall be sufficient and proper service on all the flat owners. Besides the same, the authorized officer may opt for giving copies of the notice to each flat owner though it shall not be a mandate.

(i) The authorized officer shall be the Chair person of the Special General Body Meeting and shall conduct the elections as is prescribed by law. He may take the assistance of non-contesting flat owners in conducting the elections.

(j) He is at liberty to request the station house officer of the concerned police station to depute two police constables in order to ensure that there is peace and harmony in conducting

the elections. If necessary he would resort to a video recording of the elections and the expenditure for the same shall be borne through the society funds.

(k) In the event of any impediment or hurdle, the authorized officer is at liberty to approach this Court by filing a Civil Application.

(l) The statement of the petitioner is recorded that Writ Petition No. 692/2019, filed by Kailas Bhaulal Kakde and Sow. Sumanbai Jagannathrao Kakde, pending before the learned Division Bench of this Court, shall be withdrawn on or before 01/07/2019.

(m) *Insofar* as the proceedings before the Divisional Joint Registrar, Cooperative Societies, Aurangabad are concerned, all the contentions of the litigating sides are kept open. The said authority would also consider whether the dispute is maintainable.

(RAVINDRA V. GHUGE, J.)

shp/-