

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

WRIT PETITION NO.10345 OF 2018

Shri Rajaram Shankar Mane	]	
Age : 50 years, Occupation : Agriculture	]	
R/o. Dindanerli, Taluka : Karveer,	]	
District : Kolhapur	]	 Petitioner.

Versus

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| 1] | The Divisional Joint Registrar,
Co-operative Societies,
Kolhapur Division, Kolhapur, having
office at Udyog Bhavan, Assembly Road,
Behind Collector's Office, Nagala Park,
Kolhapur. |]
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| 2] | The Asst. Registrar,
Co-operative Societies,
Taluka, Karveer, District : Kolhapur,
having office at Kolhapur Agricultural
Produce Market Committee, Kolhapur,
Plot No.M-15G, Hall No.1, SBI Bank Road,
Chhatrapati Shahu Market Yard,
Kolhapur. |]
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| 3] | Shri Vitthal Vividh Karyakari Sahakari
(Vikas) Seva Sanstha Maryadit
R/o. Dindnerli, Taluka : Karveer,
District : Kolhapur,
Through its Secretary. |]
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| 4] | Shri Banda Ganpati Patil,
Age : Adult, Occupation : Agriculture,
R/o. Dindnerli, Taluka : Karveer,
District : Kolhapur. |]
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] | Respondents. |

Mr. Prashant S Bhavake for the Petitioner.
Mr. A B Kadam, AGP, for Respondent Nos.1 and 2.
Mr. Umesh H Pawar for Respondent No.3.
Mr. P D Dalvi for Respondent No.4.

CORAM : S. S. SHINDE, J
Reserved on : 30th April 2019
Pronounced on : 03rd June 2019

JUDGMENT :

1] Rule. Considering the nature of challenge raised in the above Writ Petition, Rule is made returnable forthwith and heard.

2] The writ jurisdiction of this Court is invoked against the order dated 31/08/2018 passed by Respondent No.1 – Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur by which order the Revision Application No.154 of 2018 filed by the Petitioner herein came to be rejected and resultantly the order dated 26/04/2018 passed by Respondent No.2 – Assistant Registrar on the complaint of Respondent No.4 bearing O.W. No.202/SNIK/KAKSH-2/K75(5)Vitthal Dindnerili/18 thereby disqualifying the Petitioner from being the member or being elected as member of the managing committee for the remaining tenure of the present managing committee came to be confirmed.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the cause for filing the Revision Application No.154 of 2018 by the Petitioner is the order dated 26/04/2018 passed by Respondent No.2 under Section 75(5) of the Maharashtra Co-operative

Societies Act, 1960 (for short “the said Act”) disqualifying the Petitioner from being member or being elected as member of the managing committee for the remaining tenure of the present managing committee. The said disqualification of the Petitioner was pursuant to the complaint made by Respondent No.4 on the ground that Annual General Meeting was not held by the Petitioner and, annual audit of the society was not done from the year 2015 and that audit rectification report was not submitted before the Annual General Meeting, as also the provisions of bye-laws, in particular 8(2) and 8(22) were not followed. Respondent No.2 after following gamut of process of issuing notices etc and after giving the parties an opportunity to file their replies had passed the said order dated 26/04/2018 under Section 75(5) of the said Act and disqualified the Petitioner from being the member or being elected as member of the managing committee for the remaining tenure of the present managing committee came to be confirmed.

4 Being aggrieved by the said order dated 26/04/2018, the Petitioner filed Revision Application No.154 of 2018 under Section 154 of the said Act before Respondent No.1 along with the application for stay to the execution of the said order dated 26/04/2018. Respondent No.1, after considering the submissions led by the parties and contents of the stay application has prima facie come to a conclusion that the Petitioner has made defaults in complying the provisions of Section 75(2), (2a), (3) or (4) and also

made default by not placing audit rectification report before annual general meeting. Resultantly Respondent No.1 rejected the said stay application. Against the said order of Respondent No.1, the Petitioner filed Writ Petition (Stamp) No.14222 of 2018 before this Court. This Court by order dated 13/06/2018, without expressing any views on merits of the revision application, remanded the matter back to Respondent No.1 for disposal of the said revision application. It is on remand that Respondent No.1 has passed the impugned order dated 31/08/2018 rejecting the said revision application. It is the said order dated 31/08/2018 passed by Respondent No.1 which is taken exception to by way of the above Writ Petition.

5 In support of his case, Respondent No.4 filed an affidavit dated 12/09/2018. He reiterated the allegations made in the complaints. He stated that as per the bye laws of society 14 days clear written notice has to be given before the date fixed for general body accompanied with the agenda of the meeting, and the meeting must be called upon by the secretary. It is stated in the affidavit that the Petitioner has prepared a bogus record to show that general body has been taken on 30/09/2017. According to the affiant, no such general body was taken on 30/09/2017, no notice was given to him. It is also stated that the Petitioner by joining hands with secretary has prepared bogus and concocted documents in respect of holding of general body on 30/09/2018. As per bye law No.8(8) of the society the secretary has to reduce

in writing the minutes of the meeting within 15 days and placed the same before managing committee for approval, but the secretary did not do so. It is stated that both the authorities below after conducting detailed inquiry passed orders disqualifying the Petitioner.

6 The dispute between the parties is, whether annual general meeting was held or not, whether the audit rectification report was submitted before the annual general meeting or not, and whether the bye laws of Respondent No.3 Society have been complied with or not. When this Writ Petition came up for admission before this Court on 12/09/2018, this Court (Coram : Revati Mohite Dere, J), after recording the submissions of the parties on the aforesaid dispute, directed Respondent No.3 Society to produce the panchanama and relevant documents on record.

7 In view of the direction given by this Court, the Secretary of Respondent No.3 Society has filed a detailed affidavit in reply on 19/04/2019 annexing thereto the relevant documents. The secretary of Respondent No.3 has solemnly affirmed the said affidavit on oath and has been notarized before Udaykumar B Patil, Advocates & Notary. It is stated in the said affidavit that the election of Respondent No.3 Society was held in the month of 08/10/2016 for five years tenure of 2016-2021 and the Petitioner came to be elected as Managing Committee Member, and the Managing Committee further elected

the Petitioner as the Chairman of the Society. It is also stated that the Ex-managing Committee had not taken steps to conduct the annual audit for the financial year 2015-16 and, the newly elected managing committee submitted a proposal to the District Deputy Registrar for appointment of auditor. Accordingly the District Deputy Registrar appointed Shri S K Magdum as Auditor for completing statutory audit up to 31st March 2017 including the pending audits, if any. It is stated that the auditor completed the statutory audit on 30/08/2017 for the period with effect from 01/04/2015 to 31/03/2017 i.e. audit of financial years 2015-16 and 2016-17, and submitted the audit report to the Society on 28/09/2017. Thereafter on 14/09/2017, society issued 15 days advance notice, which incorporated agenda of the meeting, informing all the members about the Annual General Meeting which was to be scheduled on 30/09/2017. The said notice and the agenda was published on the notice of board of society as well as on the notice board of gram panchayat, Dindnerili. It is specifically stated in the said affidavit that panchayama of publication of the said notice was also conducted on 15/09/2017 in the presence of Police Patil. The secretary of the society on oath stated in the affidavit that the annual general meeting was held on 30/09/2017, notice thereof was issued 15 days in advance and the members of the society were present in the said annual general meeting, and therefore, there was no any default in calling annual general meeting within the period prescribed under Sub-section (1) of Section 75 of the said Act. It is further

stated that the society has made clear compliance of sub-sections (2), (2A), (3) and (4) of Section 75 of the said Act. It is also stated in the said affidavit that the so called complaints/applications submitted by Respondent No.4 are totally false and baseless and are submitted only with political motive. It is further stated that the gram panchayat never conducted any enquiry to find out whether aforesaid AGM was conducted or not. In so far as non-submission of rectification report is concerned, it is stated in the affidavit that Ex-managing committee did not conduct the audit of the financial year 2015-2016, and therefore proposal under the signature of the petitioner in the capacity of chairman and the then secretary was submitted by the present managing committee of the society as per Section 81 of the Maharashtra Co-operative Societies Act, 1960. It is also stated in the affidavit about the appointment of K S Magdum as the auditor for conducting audit upto 31st March 2017 including the pending audits and the said auditor finalized the joint audit report of financial year 2015-16 and 2016-17 on 30/08/2017 and thereafter AGM was conducted on 30/09/2017. It is also stated that whatever defects communicated by the auditor in the audit of the preceding financial year needs to be rectified by the committee of the society and report of such rectification shall have to be submitted in the next AGM. It is stated that the audit rectification report shall have to be submitted before annual general body meeting regarding earlier audit and not the current audit. As per the bye-laws of the society, it is the duty of the managing committee to submit the audit

rectification report in the next annual general body meeting. In the present case, the joint audit report for financial years 2015-16 and 2016-17 submitted by auditor on 30/08/2017 and therefore whatever deficiencies communicated by the auditor, needs to be rectified and report of rectification needs to be submitted in the annual general body meeting which will be held after 01/04/2018 and before 30/09/2017.

8 It is an undisputed fact that in October 2016 the Petitioner came to be elected as a managing committee member of the society for five years tenure of 2016 to 2021 and further elected as the chairman of the society. According to the Petitioner the society issued notice regarding annual general meeting on 14/09/2017. It is the case of the Petitioner that Respondent No.4 has filed false complaint for disqualification of the petitioner on the alleged ground of breach of the provisions of the said Act. The Petitioner was disqualified by Respondent No.2 and, thereafter Respondent No.1 passed the impugned order and dismissed the revision application of the petitioner thereby confirming the order of disqualification passed by Respondent No.2.

9 The learned counsel for the Petitioner submitted that Respondent No.1 rejected the revision application on two counts that the audit rectification report was not submitted before the annual general meeting, and that the provisions of bye laws, in particular 8(2) and 8(22) were not followed. The

learned counsel for the Petitioner submitted that in so far as first ground regarding audit rectification report is concerned, the same was to be submitted in the next general meeting as per the Act/Rules, and in so far as second ground regarding provisions of bye laws to be followed, he submits that a duty is cast under the said bye laws on the secretary and not on the chairman of the society. The dispute between the parties is about the holding of meeting dated 30/09/2017 by the society. According to the learned counsel for Respondent No.4, no such meeting was held, the bye laws of Respondent No.3 Society have not been complied with, the panchanama was not prepared and the notice was not pasted on the notice board. Per contra, the learned counsel for Respondent No.3 Society submitted that a meeting was held on 30/09/2017, notice was pasted in the gram panchayat office and a panchanama was drawn and there is a certificate issued by Gramsevak to that effect.

10 As stated herein above, the Secretary of Respondent No.3 has filed a detailed affidavit pursuant to the directions issued by this Court. Perusal of the said affidavit in reply would reveal that the Secretary of the society has made reference to the record maintained by Respondent No.3 Society. It is required to be noted that when the impugned order was passed by the authorities below, no such record or material was placed before the authorities for consideration. The challenge raised in this Writ Petition revolves around the allegations made by Respondent No.4 as regards the annual general

meeting, rectification of audit report, provisions of bye laws of society, and that has to be tested on the basis of the record maintained by the society. In the light of the averments made in the said affidavit in reply, prima facie, the findings recorded by Respondent No.2 - the Assistant Registrar disqualifying the Petitioner, which are confirmed by Respondent No.1 – the Divisional Joint Registrar do not appear to be in consonance with the record maintained by Respondent No.3. In that view of the matter, the impugned order dated 31/08/2018 passed by Respondent No.1 i.e. the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur would have to be quashed and set aside and the matter will have to be relegated back to the Divisional Joint Registrar for a de-novo consideration of the said Revision Application. Hence the following directions :-

- 1] The impugned order dated 31/08/2018 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur is accordingly quashed and set aside and the Revision Application No.154 of 2018 is restored to file and relegated back to the Divisional Joint Registrar for a de-novo consideration.
- 2] The Divisional Joint Registrar to adjudicate upon the said Revision Application, having regard to the affidavit in reply filed by the secretary of Respondent No.3 society stating therein that the

society has maintained the record, and arrive at a conclusion on the basis of the material on record.

- 3] Since the matter is remanded back to the Divisional Joint Registrar, the Petitioner to apply before the Divisional Joint Registrar for continuation of the ad-interim relief granted earlier by this Court by the order dated 12/09/2018 and which is remained in force till this date. However ad-interim relief granted by this Court and which is in force till date to continue till the date of appearance of the parties and it will be open for the Divisional Joint Registrar to pass an appropriate orders for continuation of interim relief.
- 4] Needless to state that the contentions of the parties are kept open for being adjudicated upon by the Divisional Joint Registrar.
- 5] The Divisional Joint Registrar to pass a speaking order dealing with the contentions of the parties and the averments made in the affidavit in reply filed by the secretary of Respondent No.3.
- 6] On remand, the Divisional Joint Registrar to decide the Revision Application latest by 31st July 2019. The parties to appear before

the Divisional Joint Registrar on 19th June 2019 at 11.00 am. The parties are at liberty to file their further pleadings, documents, however, the same to be done on or before 19th June 2019, when the parties would appear before the Divisional Joint Registrar or within such further time as the Divisional Joint Registrar may grant.

- 7] The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[S. S. SHINDE , J]