IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1613 OF 2018

Rohit Chambers Premises Co-op Soc. Ltd. .... Petitioner

versus

The State of Maharashtra & Ors. ... Respondents

…....

- Mr.Vishwajeet Sawant i/b. Sumit Kate, Advocate for Petitioner.
- Mr.S.S. Bhende, AGP for Respondent/State.
- Mr.Ashwin Shete a/w Bijal Gandhi i/b. Jayakar & Partners, Advocate for Respondent Nos.3 and 5.

CORAM : INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.
DATE : 04th FEBRUARY, 2019.

P.C. :

1. Heard learned Counsel for respective parties.

2. Challenge in the present Writ Petition has been made to an order passed by the Deputy Registrar, Cooperative Societies dated 13/11/2017 whereby the Deputy Registrar came to quash the notice under Ex.A dated 08/11/2017 and

injuncting the Petitioner Society from taking any action against the Respondent for recovery of society dues.

3. Learned Counsel for the Society submits that Ex.A was merely a show cause notice issued to the Respondent Nos.3 and 4 and without responding to the said notice the Respondent Nos.3 and 4 went and initiated the proceeding before the Deputy Registrar who in turn quashed the said notice by the impugned order.

4. Essentially contention raised by the Petitioner, is that the notice set aside by the Deputy Registrar Cooperative Society was only a show cause notice calling upon the Respondent to pay the dues. Admittedly, the Respondent Nos.3 and 4 were asking the Respondent to demand for payment and the said notice indicated that on the failure to do so, an application would be moved by the Society before Deputy Registrar, Cooperative Societies, A Ward, for issue of recovery certificate.

5. Learned Counsel for the Petitioner asserts that the Deputy Registrar ought not to have entertain such notice at that particular stage since no requisition under section 101 of the Maharashtra Cooperative Societies Act 1960, had been made to him. In other words, it is submitted that the Respondents were free to respond to such notice and bring on record any such evidence of payment of property tax if any by their licensee and thereafter if any amount remained payable, to pay the same and if not paid, the proceeding under section 101 of the Maharashtra Cooperative Societies Act, would then be initiated. In such event, the Respondent would have got an opportunity before Deputy Registrar in the context to computation made by the cooperative society of the due, if any. Instead of complying with such requirements, it appears that, the Deputy Registrar has intervened at the stage when no proceeding under section 101 had been initiated before him. Consequently, any determination made by the Deputy Registrar in such a proceedings initiated on the basis of notice itself, was not in accordance with law.

6. On the other hand, the learned Counsel appearing for the Respondent Nos.3 and 5 contended that the writ Court should not entertain the Writ Petition on the account of fact that the Petitioner society had recourse to revision under section 154 of the Maharashtra Cooperative Societies Act and all such contention, being raised before the Court could also be intervened before Revisional Authority.

7. Apart from this, he has submitted the entire evidence has been produced by the Respondent of payment of property tax by their licensee and no amount is payable by them.

8. Learned Counsel for the Appellant on the other hand submitted that the Society has in its possession all necessary documents, documentary evidence to indicate that even if the licensee by the Respondent has paid the property tax as claimed by them; yet a substantial amount still remains payable by the Respondent.

9. We have recorded the submissions of respective parties. But we do not intend to enter into the adjudication of the same, since, we are of the considered view that the entertaining the application of the Respondent Nos.3 and 4 by the Deputy Registrar by itself was premature. There, in fact, had been determination of outstanding, if any by the Society and the Respondent had not responded to the notice under Ex.A by providing the society with the necessary evidence of payment of property tax by their licensee.

10. We are of the considered view that the present Writ is maintainable inasmuch as we find that the Deputy Registrar has sought to exercise his discretion over the matter at a stage which in our considered view was premature. Hence, the exercise of such powers by the Deputy Registrar is wholly without jurisdiction. Therefore we entertain the Writ Petition.

11. We are of considered view that the Deputy Registrar ought not to have intervened in this matter of such a stage since

the Society had not finally determined the amount payable by the Respondent. The private Respondent they ought to have responded to the Society's notice, provide the society with all its evidence of payment of property tax if any and thereafter allow the society to determine whether any amount is due. Consequently, for the reasons stated hereinabove we are inclined to quash the impugned order Ex.D passed by the Deputy Registrar, Cooperative Societies, A Ward and grant the Respondent Nos.3 and 4, four weeks time to respond to the notice under Ex.A provided all such evidence of payment of property tax. We express no opinion on the submissions by the respective parties on the merits of the adverse claims.

12. Insofar as the Respondent No.5 is concerned, he shall be at liberty to proceed in accordance with the directions stated hereinabove.

13. Accordingly, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.) **(INDRAJIT MAHANTY, J.)**