

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1932 OF 2019**

Jaykumar Nadar. ..Petitioner.

V/s.

The State of Maharashtra & ors. ..Respondents.

WITH

WRIT PETITION NO. 1933 OF 2019

Kalaiselvi Jaykumar Nadar. ..Petitioner.

V/s.

The State of Maharashtra & ors. ..Respondents.

Mr. Kunal Bhanage I/b. Mr. Akshay Pawar, advocate for petitioners.

Mr. Y.D. Patil, AGP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 12, 2019.

P. C. :

1 Heard the learned Counsel for the Petitioners and the learned AGP.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The petitioners happen to be the members of Parle Nilgagan Cooperative Housing Society Ltd. i.e. respondent No. 4. On 9/5/2016 Co-operative Housing society had issued a notice to the present petitioners

Talwalkar

under section 101 of the Maharashtra Cooperative Society Act, 1960, thereby seeking recovery of the charges including penalty, interest towards maintenance of the society, which was to the tune of Rs. 1,63,225/-, which was outstanding as on 31st March, 2016. On 18th May, 2016 second notice was issued to the petitioners. It was the contention of the petitioners that the Managing Committee of the Society shall give the details of the amounts arrived at by stating the charges under different heads. The Managing Committee failed to give the details. The petitioner herein was therefore, constrained to make a representation to the Deputy Registrar, Cooperative Society and had brought it to the notice of the Registrar that the books of account are not properly maintained and therefore, the Managing Committee is not supplying the details to the petitioners. He had also demanded before the Registrar that the Managing Committee is not giving him proper bills under different head to be recovered. There was an extra recovery of water charges for 2 flats. The same was the case of the Petitioner in Writ Petition No. 1933 of 2019 and the petitioner has faced similar difficulties.

4 That the Deputy Registrar, Cooperative Society by an order dated 24/8/2018 had penalised the Managing Committee for not giving details under Right to Information Act also. The penalty was Rs. 100/- per day till the petitioners have received the details. As on today, the

bills are not given. The Petitioners had therefore, approached the District Deputy Registrar(DDR) under section 154 of the Maharashtra Cooperative Society Act, 1960. The DDR had decided the same vide order dated 28/12/2017. The DDR had recorded a finding that since there is no compliance, the matter is being disposed of.

5 The petitioner had thereafter, filed a petition. The recovery certificate was issued on 24/1/2019. The Petitioner had then approached the Minister for State, Cooperative Societies. The said representation was dismissed. Hence, the present petitions.

6 The learned Counsel for the petitioners submits that the petitioners have no intention to withhold the maintenance charges. However, the same could not be paid only because the Managing Committee had refused to give details and the head under which the said charges were levied. The DDR had also penalised the managing committee.

7 The Petitioners submit that as on today the petitioners are ready and willing to deposit 50% of the amount in the office of the respondent No. 4 by way of demand draft. The petitioners would deposit the demand draft for an amount of Rs. 1,60,000/- which would be 50% of the recovery amount in both the petitions. It is made clear that the said

Talwalkar

amount is deposited without prejudice to the rights of the parties.

8 In this case, since the petitioners are willing to deposit 50% amount in order to evade the attachment of the property, this Court do not find it necessary to issue notice to respondent No. 4. It is made clear that all contentions are kept open.

9 In view of the above, the matter deserves to be remanded back to the office of DDR who shall reconcile the statement of accounts from the office of the society i.e. from the Managing Committee. The Managing Committee shall give detailed statement of all the charges that are levelled against the Petitioners towards maintenance. The District Deputy Registrar shall decide the same within 4 months from the date of receipt of this order. In view of this, District Deputy Registrar shall ensure that the Managing Committee gives the detailed statements of the claims towards charges are levelled.

10 In view of this, the matter is remanded back to the Office of District Deputy Registrar. The Petition is allowed in the above terms. The order dated 4/2/2019 is hereby quashed and set aside. The parties including respondent No. 1 reserve their rights to settlement of claims before the District Deputy Registrar. Demand draft to be deposited in

Talwalkar

the office of the respondent No. 4 before 5 p.m. of 14th February, 2019.

11 The Rule in both the petitions is made absolute in the above terms. Both the petitions stand disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]