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

WRIT PETITION NO. 3268 OF 2018

Mr. Saurabh Bhatia

..Petitioner

Vs

Divisional Joint Registrar, Maharashtra Co.Op & Ors

..Respondents

Ms. Sumedha Rao for the Petitioner.

Ms. V.S. Nimbalkar, AGP for the Respondent Nos.1,2, and 4.

Mr. Jaydeb B. S. a/w Manish Bijutkar for the Respondent No.3.

CORAM : A.S.GADKARI, J.

DATE : 25th June 2019.

P.C.:

1] By the present petition under Articles 226 and 227 of Constitution of India, the petitioner has taken exception to the concurrent findings recorded by both the Authorities below, constituted under the Maharashtra Co-Operative Societies Act, 1960 (for short "M.C.S. Act").

2] Heard the learned counsel for the Petitioner, the learned counsel for the respondent No.3 and the learned AGP for the State. Perused the record annexed to petition.

3] In the present petition, Rule and interim relief was granted by the Co-Ordinate Bench on 23rd July 2018. The record discloses that, the respondent No.3 thereafter filed Civil Application No.2069 of 2018 for expediting hearing of the present petition on the ground that, he is a senior citizen. This Court by an Order dated 25.9.2018, allowed the said application and it was directed that the present petition be listed on final hearing board in the week commencing from 3.12.2018. In view of the urgency expressed by the respondent No.3 and by consent of the parties, the present petition was therefore taken up for hearing by this Court.

4] The record indicates that, the petitioner was the Secretary of the Kandivali Silver Co-Operative Housing Society Ltd., Kandivali (East), Mumbai (for short “the Society”). That the petitioner did not hold Annual General Body Meeting of the said Society till 30th September 2014 for the year 2013-2014, as per the mandate of Section 75 of the M.C.S. Act. The respondent No.3 therefor lodged a complaint with the respondent No.2 in the year 2016 and brought to the notice of the said Authority the said lapse committed by the petitioner. The respondent No.2 thereafter conducted enquiry and during the enquiry, the petitioner (being the Secretary) and the then Chairman of the said Society also, admitted the fact that they did not

conduct Annual General Body Meeting of the Society till 30.9.2014. The respondent after conducting indepth enquiry and after taking into consideration the evidence available on record was pleased to pass an Order dated 4.11.2016 under Section 75(5) of the M.C.S. Act and held the petitioner and Chairman of the said Society disqualified for being elected and for contesting the elections of the Society for a period of five years from the date of passing the said Order.

5] The petitioner being aggrieved by the said Order dated 4.11.2016 preferred a Revision Application bearing No.632 of 2016 before the Divisional Joint Registrar, Co-Operative Societies, Mumbai Division, Mumbai i.e. the respondent No.1 herein. The respondent No.1 after hearing the parties and after reappreciating the evidence available on record, dismissed the said Revision by its impugned Order dated 30th November 2017 and confirmed the Order dated 4th November 2016 passed by the respondent No.2.

6] Ms. Rao, the learned counsel for the petitioner submitted that, the issue involved in the Application before the respondent No.2 was already adjudicated before the Co-Operative Court and therefore the respondent No.2 ought not have passed the impugned Order dated

4.11.2016. She submitted that, after the lapse on the part of petitioner which occurred in September 2014, as a matter of fact, the Annual General Body Meeting of the Society was conducted belatedly. She further submitted that, after the lapse on the part of the petitioner which occurred in the month of September 2014, the respondent No.3 who himself is a defaulter of the Society, has lodged the present complaint in the year 2016 i.e. after a delay of two years. She further submitted that, both the authorities below ought not have entertained the the said complaint and disqualified the petitioner for contesting election for a period of five years. In support of her contention, the learned counsel relied on the decision of the Honourable Supreme Court in the case of Dr. Kazimunnisa (Dead) by Legal Representative Vs. Zakia Sultana (Dead) by Legal Representative, reported in (2018) 11 SCC 208. She therefore prayed that, the present petition may be allowed by quashing and setting aside the impugned Orders.

7] At the outset, it is to be noted here that, the contention raised by the learned counsel for the petitioner that, when the matter was involving the same issue which is subjudiced before the Co-Operative Court, the respondent No.2 authority ought not have passed Order dated

4.11.2016 is concerned, the record indicates that the said fact was never pleaded before the lower Authorities at the first instance. It is an admitted fact on record that, the petitioner being the Secretary and also the then Chairman of the Society, did no conduct Annual General Body Meeting of the said Society prior to 30.9.2014, as per the mandate of law and thus has committed default, as contemplated under Section 75 thereby attracting the provisions of Section 75(5) of the M.C.S. Act.

8] The Supreme Court in the case of *Krishnanand (Dead) Through Legal Representatives & Ors. Vs. Deputy Director of Consolidation & Ors.* reported in (2015) 1 SCC 553 while dealing with the scope of the High Court under Article 226 of Constitution of India has held that, it is a settled law that, a jurisdiction under Article 226 of the Constitution cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or acted is patently perverse.

It is observed in para 7 of the said decision that, a plain reading of the impugned Order therein shows that, the High Court had committed an error in re-appreciating the evidence by setting aside the findings of fact,

which is normally impermissible in exercise of its jurisdiction under article 226 of the Constitution of India. It is further observed that, interference with concurrent findings of fact cannot be called for only on the ground that authorities/Courts below acted perversely i.e. lacked or exceeded jurisdiction or rendered perverse findings.

9] The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*, reported in AIR 1964 SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material

evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

10] While dealing with the scope of Article 227 of Constitution of India, the Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a

patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

11] The pleadings in the petition and arguments advanced by the learned counsel for the petitioner would amount to reappreciation of the evidence on record. A bare perusal of the record and the documents

annexed to the petition would clearly indicate that, both the Authorities below while passing impugned Orders, did not act in excess of their jurisdiction and the findings recorded therein are not perverse.

12] It is to be noted here that, it is because of the default committed by the petitioner, the legal fiction as contemplated under Section 75(5) of M.C.S. Act has come into operation and therefore the respondent No.2 has rightly passed the impugned Order dated 4.11.2016 thereby holding petitioner disqualified for being elected and for contesting the election of the said Society for a period of five years from the date of passing of the said Order.

The petition being devoid of merits, is accordingly rejected.

13] At this stage, the learned counsel for the petitioner submitted that, the petitioner intends to challenge the present Order before the Honourable Supreme Court and seeks 12 weeks extension of the interim relief granted by Order dated 23rd July 2018. The learned counsel for the respondent No.3 vehemently opposed the said prayer.

In view thereof, the said prayer is rejected.

(A.S.GADKARI, J.)