

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

WRIT PETITION NO.11357 OF 2018

Sudhakar D. Shinde & Anr. ... Petitioners.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Uday P Warunjikar for the Petitioners.
Mr. S D Rayrikar, AGP for the Respondent Nos.1 & 2.
Mr. Niranjana A Mogre for the Respondent Nos. 3 to 10

CORAM : S. S. SHINDE, J
DATE : 12th March 2019

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 28/08/2017 passed by the Divisional Joint Registrar, Co-op. Societies, Mumbai Division, Mumbai by which order the Revision Application No.87 of 2015 filed by the Petitioners came to be dismissed and resultantly the order dated 26/02/2015 passed by the Deputy Registrar, Co-operative, R/N Ward, Mumbai under Section 78(A)(i)(b) of the Maharashtra Co-operative Societies Act, 1960 (for short “the said Act”) came to be confirmed. By the said order the Divisional Joint Registrar has also vacated the stay granted in favour of the Petitioners.

2 The Petitioners herein are the erstwhile members of the Om Shree Alkapuri Co-operative Housing Society Ltd. On 25/07/2012 a complaint was made to the Respondent No.2 herein by one Shri Y C Pandit and other

members of the society in respect of the affairs of the society and the illegalities and irregularities committed by the Petitioners for the year 2009-2010. Accordingly inquiry was held and inquiry report was submitted by the inquiry officer. On the basis of the said inquiry report, a show cause notice was issued by the Respondent No.2 calling upon the Petitioners to show causes as to why they should not be removed from the managing committee. The Petitioners submitted their reply to the said notice. The consequence of the said notice was that the Respondent No.2 passed the order on 26/02/2015 thereby removing the Petitioners from the managing committee of the said society in view of the irregularities committed by the Petitioners in the economic affairs of the society for the year 2009-2010.

3 Being aggrieved by the said order of the Deputy Registrar, the Petitioners herein invoked the revisionary jurisdiction under Section 154 of the said Act and challenged the order of the Respondent No.2 before the Divisional Joint Registrar by filing a Revision Application No.87 of 2015. The gist of the reasoning of the Divisional Joint Registrar as can be seen from the impugned order was that the office bearers without inviting tenders by publishing tender notice in the News Paper had given repair work to M/s. D N H Construction Company, in spite the said company had not given their tender to the society. The tenders were not opened in the presence of the members or in the General Body Meeting of the Society and therefore the office bearers

have violated the provisions of Bye Laws No.157 and 158. The office bearers without obtaining the permission of the office of the Deputy Registrar has withdrawn the sinking fund amount and also failed to furnish the requisite documents in support of the said withdrawal. The Revisionary Authority observed that the office bearers of the society without following the due process of law were managing the affairs of the society and they have committed gross irregularities and, failed and neglected to discharge their duties. The Revisionary Authority therefore did not deem it appropriate to interfere with the order passed by the Deputy Registrar and dismissed the Revisional Application filed by the Petitioners. As indicated above, it is the said order dated 28/08/2017 passed by the Divisional Joint Registrar which is taken exception to by way of the present Writ Petition.

4 The learned counsel appearing on behalf of the Petitioners Mr. Uday Warunjikar would contend that the explanation offered by the Petitioners was not considered by the Authorities. He further contended that the building was in dilapidated condition and therefore notice was given by the BMC for immediate action and therefore for the safeguard of the building the amount was utilized. It is further submitted by the learned counsel for the Petitioners that the amount utilized from the Welfare Fund was again reinvested in the Welfare Fund Account. It is further submitted that the opinion and explanation given by the Federation has not been taken into consideration by the

Authorities below. He further submitted that sufficient opportunity of being heard was not given to the Petitioners. He lastly contended that there is no provision to take permission of the Authority for the use of sinking fund and as a resolution was passed in the general body meeting of the society, the sinking fund may be used by the society for reconstruction building as would be necessary, and therefore the funds used by the Petitioners was in the overall interest/welfare of the society. It is further submitted that the Petitioners were removed as the members of the managing committee of the society for one term. The period of one term stood already expired. Hence the Petitioners are now eligible to contest the ensuing elections of the said society. He lastly submitted that the authorities below have erred in coming to the conclusion that the Petitioners have violated the provisions of byelaws and the orders passed by the authorities below are required to be quashed and set aside.

5 The learned counsel for the Respondent Nos.3 to 10 Shri Niranjan Mogre supports the impugned order passed by the authorities below. He submitted that on the basis of the complaint regarding the irregularities committed by the Petitioners, the inquiry was held and the inquiry officer in his report mentioned that the Petitioners had utilized the amount of the society without taking prior permission or sanction of the competent authority and hence there was a violation of Bye law 14. He further submitted that the repairing work was allotted to a company without tender and it creates doubt

in the mind of the members of the society. It is also submitted that the Petitioners have clearly violated the provisions of bye laws. He lastly submitted that the orders passed by the authorities below need not be interfered with and the Petition is liable to be dismissed.

6 Heard the learned counsel for the parties. The principal contention of the learned counsel for the Petitioners is that the amount utilized by the Petitioners was in the safeguard of the building and in overall interest of the members of the society because the BMC has issued a notice for immediate action as the building was in dilapidated condition. It is not possible for this Court to accept the said contention of the Petitioners. There was no prior permission of the Registrar of the Society obtained by the Petitioners for the utilizing the amount of sinking fund for repairing. It is pertinent to note that the repairing work allotted to M/s. D N H Construction Company was without any tender from it. The Revisionary Authority held that the Petitioners have failed and neglected to discharge their duties and the charges levelled against them are serious in nature. The Revisionary Authority has come a conclusion that the Petitioners have committed gross irregularities, and the Deputy Registrar after following due process of law has passed the order removing the Petitioners from the Managing Committee of the Society.

7 The contention of the learned counsel for the Petitioners that the

period of removal of the Petitioners as the members of the managing committee for one term,f which has already come to an end, is concerned, the said contention has no merit. Though the Respondent No.2 has passed the order on 26/02/2015, the said order has taken effect in the year 2017. Till then the said order was stayed by the Respondent No.1. it is in the said context, it would be necessary to refer to the provision of Section 78(A)(1)(b) of the Act which for the sake of ready reference is reproduced herein under :-

78A. Power of suppression of committee or removal of member thereof. - (1) If in the opinion of the Registrar, the committee or any member of such committee has committed any act, which is prejudicial to the interest of the society or its members or if the State Co-operative Election Authority has failed to conduct the elections in accordance with the provisions of this Act or where situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has, or is likely to, come to a stand-still, or if serious financial irregularities or frauds have been identified or if there are judicial directives to this effect or, if there is a perpetual lack of quorum or, where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such committee stands disqualified by or under this Act for being a member of the committee, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections in writing as provided under subsection (1) of section 78 and after giving a reasonable opportunity of being heard, and after consultation with the federal

society to which the society is officiated comes to a conclusion that the charges mentioned in the notice are proved, and the administration of the society cannot be carried out in accordance with the provisions of this Act, rules and by-laws, he may by order stating reasons therefor,-

(a)

(b) remove the member:

Provided that, the member who has been so removed shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of any committee of any society till the expiry of period of next one term of the committee from the date on which he has been so removed:

Provided further that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply.”

Section 78((A)(1)(b) provides that the member who has been so removed shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of any committee of any society till the expiry of period of next one term of the committee from the date on which he has been so removed. The allegation against the Petitioner is that they have committed illegalities and irregularities during their term period as the office bearers of the said Society. The Petitioners were removed by the order dated 26/02/2015 passed by the Respondent No.2. The said order was stayed by the Respondent No.1 till the year 2017. Hence the actual removal of the Petitioners starts from the year 2017. It means the Petitioners were on Managing Committee till 2017.

Therefore the contention of the learned counsel for the Petitioners that the Petitioners are eligible to contest the ensuing elections of the said Society cannot be accepted.

8 There are concurrent findings of the authorities below. In that view of the no case for interference at the hands of this Court in writ jurisdiction is made out. The above Writ Petition is accordingly dismissed.

[S. S. SHINDE , J]