

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7008 OF 2019

Mahesh Gada and others ... Petitioners
Vs.
Milan Industrial Premises Co-operative Society
Limited and others ... Respondents

Mr. M. A. Shah i/b. Auroma Law for Petitioners.
Ms Khevana Dagli a/w. Mr. Amit Dubey i/b. Mr. Ashok M. Saraogi for
Respondent No.2.
Mr. C. D. Mali, AGP for Respondent No.10-State.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 11, 2019

P.C. :

This case was heard on 18.10.2019 but because of the intervening holidays, judgment could not be delivered on an earlier date. Accordingly, today is fixed for delivery of order.

2. Heard Mr. Khandeparkar, learned counsel for the petitioners, Mr. Saraogi, learned counsel for respondent No.2 and Mr. Mali, learned AGP for respondent No.10-State.

3. By filing this Petition under Article 227 of the Constitution of India, petitioners seek quashing of order dated 21.02.2019 passed by Divisional Joint Registrar of Co-operative Societies, Mumbai Division i.e. respondent No.10 dismissing the revision application filed by the petitioners against orders dated 20.02.2018 and 30.05.2018 passed by the Assistant Registrar of Co-operative Societies.

4. Case of the petitioners is that they are members of Milan Industrial Premises Co-operative Society Limited, respondent No.1, which is a co-operative housing society, governed under the provisions of the Maharashtra Co-operative Societies Act, 1960.

5. It is the case of the petitioners that respondent Nos.5 and 6 and other members of the managing committee of respondent No.1 were also earlier members of the managing committee of respondent No.1. They were removed from their office by the Assistant Registrar vide order dated 06.12.2013 which led to a series of litigation. Ultimately, in Writ Petition No.9225 of 2014, an order was passed by this Court on 14.10.2014 directing holding of election afresh to the managing committee of respondent No.1 by the State Co-operative Election Authority.

6. Accordingly, election to the managing committee of respondent No.1 was held on 16.01.2015 in which petitioner No.1 was elected as chairman, petitioner No.2 as secretary and petitioner No.3 as assistant treasurer for a period of 5 years.

7. It is stated that after election of the new managing committee of respondent No.1 as above, members of the outgoing managing committee including respondent Nos.3, 6 and 7 failed to handover records of respondent No.1 to the new managing committee members, which adversely affected functioning of respondent No.1. In this connection, there was exchange of correspondence between petitioners and respondents.

8. Instead of handing over the records, respondent Nos.2 to 7 lodged complaint before the Assistant Registrar of Co-operative Societies on various issues including non-holding of Annual General Meeting (AGM) of respondent No.1 within time. Petitioners were show caused by the Assistant Registrar. Despite being handicapped by non-availability of the records, petitioners (respondents in the show-cause notice) informed the Assistant Registrar about holding of AGM.

9. Assistant Registrar passed order dated 10.03.2017 under Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 (Act

hereinafter) removing the petitioners and another as members of the managing committee and further disqualifying them from contesting elections for a period of 5 years.

10. Petitioners challenged the said order dated 10.03.2017 by filing revision application. It may be mentioned that following filing of revision application, another series of litigation took place.

11. Ultimately, the revision application was allowed by setting aside the order of the Assistant Registrar dated 10.03.2017, remanding the matter back for fresh consideration.

12. On remand, Assistant Registrar passed order on 20.02.2018 again removing the petitioners and the treasurer Shri Kunal Bajaj from their office and further disqualifying them from holding office for a period of 5 years.

13. Against the aforesaid order, petitioners preferred revision application No.132 of 2018 before respondent No.10.

14. During pendency of the revision application, Assistant Registrar passed order dated 30.05.2018 under Section 77A(2) of the Act dismissing the managing committee of respondent No.1 and appointing an authorized officer as an administrator of respondent No.1 for attending to its day-to-day affairs.

15. Against this order dated 30.05.2018, petitioners preferred an appeal before respondent No.10.

16. Respondent No.10 took up the revision as well as the appeal together. By a common order dated 21.02.2019, respondent No.10 dismissed the revision application as well as the appeal and confirmed the orders dated 20.02.2018 and 30.05.2018.

17. Aggrieved, present writ petition has been filed.

18. Learned counsel for the petitioners submits that petitioners were disqualified and further debarred from contesting election for a period of 5 years for not holding AGM for the year 2014-15 within the stipulated period. It is contended that petitioners were neither members of the managing committee of respondent No.1 nor holding any office at the relevant time; therefore they could not be faulted for not holding AGM for the year 2014-15 within time. As a matter of fact, some of the respondents including respondent Nos.5 and 6 were themselves at the helm of affairs of respondent No.1 and it was their failure to hold AGM within stipulated time which led to the series of litigation culminating in holding of AGM on 16.01.2015, in which petitioners were elected.

18.1. Referring to Section 75(5) of the Act as well as Section 77A thereof, he submits that debarment as imposed by the authorities below is not automatic even if it is construed for the sake of argument that it was the failure of the petitioners to hold AGM within the stipulated period. In this connection, learned counsel for the petitioners has referred to a judgment of this Court in ***Gaurav K. Desai Vs. State of Maharashtra, Writ Petition No.11699 of 2014*** decided on **06.02.2015**.

19. On the other hand, learned counsel for the respondents supports the orders passed by the authorities below.

19.1. Referring to the affidavit filed by respondent No.2 and the bye-laws of respondent No.1, it is submitted that members of the managing committee shall be jointly and severally responsible for all the decisions taken by the managing committee during its term relating to business of the society.

20. Submissions made by learned counsel for the parties have been

considered; also perused the materials on record.

21. From the order dated 21.02.2019 what is noticeable is that according to respondent No.10, the default of the petitioners was not holding of AGM for the year 2014-15 within the stipulated period. To deal with this aspect, it will be useful to advert to Section 75 of the Act.

22. Section 75 deals with annual general body meeting. As per sub-section (1), every co-operative society is required to call the annual general body meeting of its members within a period of 6 months after close of the financial year to transact its business. As per the proviso, where such meeting is not called by the society, the Registrar or any officer authorized by him may call such meeting in the manner prescribed and that meeting shall be deemed to be a general body meeting duly called by the society. In such eventuality, the expenditure incurred in calling such meeting shall be paid out of the funds of the society or shall be borne by such person or persons who in the opinion of the Registrar were responsible for not convening the general meeting.

23. As per sub-section (5), if there is default in calling a general body meeting within the period prescribed under sub-section (1) or in complying with other provisions of the section, the Registrar may by order declare any officer or member of the committee whose duty it was to call such a meeting or comply with such provisions and who without any reasonable excuse failed to comply with any of the aforesaid sub-sections as disqualified for being elected and for being any officer or member of the committee for such period not exceeding 5 years as he may specify in such an order and if the officer is a servant of the society, impose a penalty on him of an amount not exceeding Rs.5,000.00. Before making such an order, the Registrar shall give or cause to be given a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him.

24. A conjoint reading of the aforesaid provisions as discussed above would indicate that it is the duty of every co-operative society to call annual general body meeting within six months after close of financial year. Financial year closes on 31st of March of the year. Therefore, the six months' period for holding annual general body meeting is till 30th of September of the said year. If there is failure to hold such a meeting within 30th of September, it leads to two things. Firstly, the Registrar or any officer authorized by him may call such meeting and secondly, the Registrar may, by order declare any officer or member of the managing committee whose duty it was to call such a meeting but who failed to call such meeting disqualified for being elected and also debar him for being an officer or member of the managing committee for such period not exceeding 5 years.

25. Coming to the second consequence of not holding AGM within the stipulated period, which is relevant to this *lis*, what is noticeable is that the consequences under sub-section (5) would be fastened on such officer or member whose duty it was to call such a meeting and who failed to call such a meeting without any reasonable cause. Therefore, the first requirement for the consequences contemplated under sub-section (5) is to identify the officer or member of the managing committee whose duty it was to call the AGM and who without reasonable cause, failed to call such meeting.

26. As already noticed, the dispute pertains to non-holding of AGM for the year 2014-15. This AGM ought to have been held on or before 30th September, 2015. It is on record that the AGM in question was held on 16.01.2015 in terms of order of this Court and in that AGM, petitioners were elected as members of the managing committee.

27. From the orders passed by the authorities below, more particularly that of respondent No.10, there is nothing to indicate that petitioners were members of the managing committee of respondent No.1 for the

earlier period who were entrusted with the responsibility of calling the AGM for the year 2014-15. Rather, it is the case of the petitioners that respondent Nos.5 and 6 were members of the erstwhile managing committee of respondent No.1 who were removed from office by the Assistant Registrar on 06.12.2013.

28. It is following a series of litigation pursuant to their removal which culminated in the order passed by this Court in Writ Petition No.9225 of 2014 dated 14.10.2014 that the belated AGM was held on 16.01.2015 in which petitioners came to be elected as office bearers of the managing committee of respondent No.1. Therefore, by no stretch can it be said that petitioners were responsible for not holding AGM for the year 2014-15. This aspect of the matter has not been dealt with by respondent No.10 in the impugned order. Respondent No.10 mechanically held that applicants (petitioners herein) made default in not calling the AGM for the year 2014-15 within the stipulated period and hence violated Section 75 of the Act. But the question is how and in what manner? This question has not been answered by respondent No.10.

29. As discussed above, for taking action under sub-section (5) of Section 75 of the Act, the first requirement is to identify by the Registrar the officer or member of the managing committee whose duty it was to call the AGM and who failed to call such AGM without any reasonable cause. This the Registrar failed to do which has vitiated the impugned orders, rendering the orders unsustainable in law. Therefore, it may not be necessary to deal with the other aspect i.e. debarment for 5 years-whether it is automatic or some application of mind is required.

30. At this stage, it may be stated that the order passed under Section 77A which deals with appointment of member of committee, new committee, authorized officers, etc. where there is failure to elect member to constitute the committee or where the committee does not

enter upon office is consequential in nature, consequent upon order passed under Section 75(5) of the Act.

31. Since the Court has come to the conclusion that the order passed under Section 75(5) of the Act is legally unsustainable, the consequential order passed under Section 77A of the Act would also have to be struck down.

32. Therefore, having regard to the discussions made above and on due consideration, orders dated 20.02.2018, 30.05.2018 and the order passed in Revision dated 21.02.2019 are hereby set aside and quashed.

33. Writ Petition is allowed but without any order as to costs.

(UJJAL BHUYAN, J.)

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