IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11176 OF 2019

Sujeet Suvalal Lodha and others … Petitioners
Vs.
Deputy Registrar Pune City-1 and others … Respondents

Mr. Chetan G. Patil for Petitioners.
Mr. P. V. Nelson Rajan, AGP for Respondent Nos.1 and 6-State.
Mr. P. K. Dhakephalkar, Senior Advocate i/b. Mr. Jaydeep Deo for Respondent Nos.3 and 4.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 15, 2019

P.C. :

Heard Mr. Chetan Patil, learned counsel for the petitioners; Mr. P. V. Nelson Rajan, learned AGP for respondent Nos.1 and 6-State; and Mr. Dhakephalkar, learned Senior Counsel i/b. Mr. Jaydeep Deo, learned counsel for respondent Nos.3 and 4.

2. By this writ petition, petitioners have challenged legality and validity of the order dated 02.07.2019 passed by respondent No.6 in Revision Application No.34 of 2019 and order dated 17.12.2018 passed by respondent No.1 under Section 83 of the Maharashtra Co-operative Societies Act, 1960.

3. Respondent No.2 is a co-operative housing society registered and functioning under the provisions of the Maharashtra Co-operative Societies Act, 1960 (briefly ‘the Act’ hereinafter). Petitioners are members of respondent No.2.

4. Without entering into the rival contentions in detail at this stage, what is to be noted is that on the basis of a complaint allegedly at the instance of respondent Nos.3 and 4, District Deputy Registrar of Co-

operative Societies, Pune passed an order dated 16.11.2017 under Section 81(6) of the Act appointing Smt. S. A. Ranpise, a departmental auditor, to conduct re-audit of the accounts of respondent No.2 for the period from 2012 to 2016.

5. Pursuant to such order, the auditor re-audited the accounts of respondent No.2 for the period from 01.04.2012 to 31.03.2016 and thereafter submitted her report dated 17.04.2018 to the District Deputy Registrar i.e. respondent No.1.

6. Respondent Nos.3 and 4 on 27.06.2018 submitted a complaint before respondent No.1 against the petitioners *vis-a-vis* their role in the affairs of respondent No.2. On the basis of the complaint and on the basis of the report dated 17.04.2018, respondent No.1 passed an order dated 17.12.2018 appointing respondent No.5 to enquire into the working of respondent No.2 under Section 83 of the Act.

7. Aggrieved by the aforesaid order dated 17.12.2018, petitioners preferred a revision application before respondent No.6 under Section 154 of the Act, which was registered as Revision Application No.343 of 2019. By order dated 02.07.2019, respondent No.6 dismissed the revision application.

8. Aggrieved, present writ petition has been filed under Articles 226 and 227 of the Constitution of India seeking the reliefs as indicated above.

9. This Court vide order dated 18.10.2019 had passed an interim order to the effect that enquiry officer should not proceed further with the enquiry as directed by the Deputy Registrar of Co-operative Societies.

10. Learned counsel for the petitioners submits that the conditions

precedent for exercise of powers under Section 83 of the Act were absent and, therefore, respondent No.1 could not have directed initiation of enquiry under Section 83. He submits that there are 3 situations and on the basis of any one of the three situations only, power available under Section 83 can be invoked. In the absence thereof, jurisdiction under Section 83 would not be available which is the case with the impugned order. Therefore, impugned order is *nonest* in the eye of law.

10.1. He further submits that respondent No.1 cannot now contend that he had invoked jurisdiction under Section 83 *suo motu* as the order must reflect *suo motu* invocation of jurisdiction.

10.2. In support of his submissions, learned counsel for the petitioners has placed reliance on a Division Bench judgment of this Court reported in **2018 (1) Mh.L.J. 615**, *Girijashankar Vs. State of Maharashtra* as well as Single Bench decisions of this Court reported in **2016 SCC OnLine Bom 3927**, *Jeevan Niwas CHSL Vs. State of Maharashtra* and in **2011 (4) Mh.L.J. 432**, *Ashok Saha Vs. State of Maharashtra*.

11. On the other hand, learned Senior Counsel appearing for respondent Nos.3 and 4, while distinguishing the judgments relied upon by learned counsel for the petitioners, contends that the provisions of Section 83 of the Act would have to be read as a whole and in a meaningful manner. On a reading of the impugned order, it is evident that respondent No.1 had invoked jurisdiction under Section 83 *suo motu*. It is not necessary that there has to be recital in the order that respondent No.1 had invoked his jurisdiction *suo motu*. He, therefore, submits that the writ petition is misconceived and premature as well, as only an enquiry has been ordered. In the enquiry that has been ordered, petitioners would have ample opportunity to defend themselves and to prove their case.

12. Learned AGP supports the contentions of learned counsel for

respondent Nos.3 and 4 and submits that the impugned order is perfectly valid and, therefore, no interference is called for.

13. Submissions made by learned counsel for the parties have been duly considered; also perused the materials on record.

14. A perusal of the order dated 17.12.2018 passed by respondent No.1 would go to show that respondent No.1 had examined re-audit report of Smt. S. A. Ranpise, Auditor, who had conducted re-audit as per order of the District Deputy Registrar of Co-operative Societies, Pune dated 16.11.2017. Respondent No.1 took note of the objections made by the auditor and, therefore, in exercise of powers conferred under Section 83 of the Act appointed respondent No.5 as the enquiry officer to hold enquiry into the financial condition and affairs of respondent No.2. The enquiry officer was directed to submit report within 3 months.

15. This order was challenged by the petitioners before respondent No.6 by filing revision application. Respondent No.6 by his order dated 02.07.2019 observed that respondent No.1 had followed the procedure under Section 83 while passing the order dated 17.12.2018. He took the view that the enquiry so directed was in the nature of administrative work and that petitioners would have adequate opportunity to have their say during the enquiry before the enquiry officer. Therefore, respondent No.6 did not find any good reason to interfere with the order dated 17.12.2018 and accordingly dismissed the revision application.

16. Since the issue revolves around interpretation of Section 83 of the Act, it would be apposite to advert to the provisions of Section 83(1) of the Act, which reads as under:

> "**83. Inquiry by Registrar**
>
> (1) The Registrar may suo motu, or, on the application of the one-fifth members of the society or on the basis of Special Report under the third proviso to sub-section (5B) of section 81, himself or by a person duly authorised by him in writing, in this behalf, shall hold an inquiry into the

constitution, working and financial conditions of the society.”

17. From a careful consideration of Section 83(1) of the Act, it is seen that Registrar can direct holding of enquiry either by himself or by a person duly authorized by him in writing to enquire into the constitution, working and financial conditions of the society subject to satisfaction of the following conditions:

(i) the Registrar may on his own motion; or

(ii) on the application of the 1/5th members of the society; or

(iii) on the basis of Special Report under the third proviso to sub-section (5B) of Section 81.

17.1. In other words, when there is an application by 1/5th members of the society or there is a Special Report under the third proviso to sub-section (5B) of Section 81, it becomes mandatory for the Registrar to hold enquiry under Section 83(1). The use of the word “shall” in the second part of Section 83(1) is indicative of the obligatory nature of the provision in the event of presence of the later two situations. However, in addition to the above, the Registrar has the discretion to hold enquiry either by himself or by an authorized person on his own motion. Of course such discretionary power has to be exercised on the basis of relevant materials on record, in a judicious manner and in good faith.

18. It is not necessary that there has to be a specific recital in an order passed by the Registrar under Section 83(1) of the Act that he has exercised *suo motu* power. It would suffice if it is discernible from the order itself. The factual situation in **Girijashankar** (*supra*) is distinguishable from the present case inasmuch as in **Girijashankar** (*supra*), the Minister (respondent No.4) had exercised *suo motu* revisional power to cancel the licence. What was noted in that case was that while exercising *suo motu* revisional power, respondent No.4 did not intimate to the parties his intent to exercise *suo motu* revisional powers and did not put the parties to notice against exercise of such *suo*

motu revisional powers which would lead to cancellation of licence.

19. In the present case, respondent No.1 had before him a report of re-audit carried out by a departmental auditor on the basis of order dated 16.11.2017. The report pointed out certain issues which required further enquiry. It was in that context that respondent No.1, acting on his own motion based on such report, directed enquiry under Section 83(1). No error or infirmity in such order of respondent No.1 is discernible. No case for interference is made out in exercise of powers under Articles 226 and 227 of the Constitution of India.

20. There is no merit in the writ petition. Writ petition is dismissed.

(UJJAL BHUYAN, J.)

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