

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10378 OF 2019

Ashish Khandelwal and another Vs. The State of Maharashtra and others		Petitioners Respondents
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Dr. Uday P. Warunjikar for Petitioners.
Mr. A. B. Kadam, AGP for Respondent Nos.1 to 3.
Mr. Suresh K. Mali a/w. Mr. Vishnu L. Chaudhari for Respondent No.4.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 29, 2019

P.C. :

Heard Dr. Warunjikar, learned counsel for the petitioners; Mr. Kadam, learned AGP for respondent Nos.1 to 3-State and Mr. Mali, learned counsel for respondent No.4.

2. By filing this Petition under Article 226 / 227 of the Constitution of India, petitioners have assailed legality and correctness of order dated 20.08.2019 passed by respondent No.1 as the revisional authority directing holding of election to fill up the vacancies in the managing committee of respondent No.4 i.e. Oberoi Co-operative Housing Society, a co-operative housing society registered and functioning under the Maharashtra Co-operative Societies Act, 1960.

3. As would be evident from the above, the dispute centers around holding of election to fill up the vacancies in the managing committee of respondent No.4.

4. Elections for the 17 members in the managing committee of respondent No.4 were held on 13.02.2017. For whatever reason which may not be relevant for the purpose of adjudication of the present petition, out of 17, 15 members were elected including the two

petitioners. It appears that out of the 15 members, 1 was initially disqualified for not attending meetings; subsequently, another member resigned. Later on, 7 members including the two petitioners submitted resignation alleging misconduct by the Chairman. Thus, out of the 15 members, 9 of them either resigned or were disqualified.

5. This created a piquant situation inasmuch as only 6 members remained whereas as per the bye-laws the coram is 9. According to the petitioners, the conduct of the Chairman was improper and in this connection, they had submitted representation before the concerned Deputy Registrar of Co-operative Societies.

6. After issuing show cause notice under Section 77A of the Maharashtra Co-operative Societies Act, 1960 and after hearing the matter, Deputy Registrar appointed respondent No.5 as the authorized officer of respondent No.4.

7. This order appointing respondent No.5 as the authorized officer was appealed against by respondent No.4 before the Divisional Joint Registrar of Co-operative Societies, Mumbai Division by filing Appeal No.155 of 2018 along with an application for stay. After hearing the matter, Divisional Joint Registrar passed order dated 23.07.2018 rejecting the stay application. Thereafter, vide order dated 07.06.2019, Divisional Joint Registrar dismissed the appeal.

8. Against the order dated 07.06.2019, respondent No.4 preferred revision application under Section 154 of the Maharashtra Co-operative Societies Act, 1960 before respondent No.1. Respondent No.1 disposed of the revision application vide order dated 20.08.2019 by setting aside appointment of the authorized officer and directing respondent No.4 as well as the concerned authorities of the Co-operation Department to fill up the resultant vacancies of members of the managing committee.

9. Aggrieved by the said order dated 20.08.2019, present writ petition has been filed.

10. Learned counsel for the petitioners submits that the revisional authority had acted on two circulars of the State Co-operative Election Authority dated 26.10.2018 and 28.03.2019 while directing filling up of the resultant vacancies by holding election afresh since more than 2½ years' period remained of the existing period.

10.1. He submits that these two circulars would not be applicable in the case of the petitioners as the law on the date when the vacancies arose provided that the vacancies should not be filled up till expiry of the period.

10.2. His further contention is that if at all election is to be held, it should be held under supervision of the authorized officer of respondent No.5 and not under the Chairman as free and fair election cannot be expected under him.

11. On the other hand, learned counsel for the respondents have supported the order passed by the revisional authority by contending that a co-operative housing society comprising of 17 members cannot be managed by 6 members. All that the revisional authority had directed was to fill up the vacancies necessitated by the conduct of the members including that of the petitioners in resigning from their membership.

12. Submissions made by learned counsel for the parties have been considered.

13. Without entering into the technicalities what is noticeable is that managing committee of respondent No.4 comprises of 17 members. In the election which was held in February, 2017, 15 were elected. Out of the 15, either on account of disqualification or on account of resignation,

only 6 members now remained in office. It is true that to tide over this situation, the concerned Deputy Registrar had acted under Section 77A and appointed respondent No.5 as the authorized officer.

14. Tenure of the managing committee is for 5 years. Therefore, the office of the present managing committee should ordinarily be till February, 2022. The situation which has arisen because of the resignation or disqualification of 9 members of the managing committee is required to be addressed. Respondent No.4 i.e., the co-operative housing society cannot be allowed to continue in such a state of uncertainty. Appointment of authorized officer can only be an interim arrangement. Viewed in that context, order passed by the revisional authority that the vacancies, 9 in number, should be filled up by holding election cannot be faulted. However, at the same time, to assuage the apprehension expressed by the petitioners that the election conducted under the Chairman may not be free and fair, Deputy Registrar i.e. respondent No.3 should ensure that the elections as directed by the revisional authority is conducted in a free and fair manner and strictly in accordance with the bye-laws of respondent No.4. Let the electoral process be completed within a period of 60 days from today.

15. Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

Minal Parab