

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

WRIT PETITION NO.14211 OF 2017

Prem Khanduri and ors. : Petitioners.
Versus
The Deputy Registrar Cooperative Societies and ors. : Respondents.

Mr. S B Shetye for the Petitioners.
Mr. A B Kadam, AGP for the Respondent Nos.1 to 3.
Mr. Manish Bohra for the Respondent No.4.
Mr.Ashish Verma i/by Prem Dhuruvey for the Respondent No.6
Mr. A M Saraogi for the Respondent No.7.
Mr.Bhavesh Kalia – Respondent No.5 in person.

CORAM : S. S. SHINDE, J
DATE : 19th March 2019

P.C.

1 The order dated 08/12/2017 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai dismissing the Revision Application No.347 of 2017 is taken exception to by the above Writ Petition. By dismissing the said Revision Application filed by the Petitioners herein, the Appellate Authority has also confirmed the order dated 19/07/2017 passed by the Deputy Registrar, C.S. R/S Ward, Mumbai removing the Petitioners from the Managing Committee of the Society for further one term.

2 The Petitioners herein are the elected committee members and office bearers of Respondent No.4 Society. Respondent Nos.5 and 6 herein are

the complaints. Respondent Society is registered in the year 2003-2004. Respondent No.5 herein is the member of the society in respect of Flat No.B/803. It is the case of the Petitioners that Respondent No.5 violated the provisions of bye laws of the society by forcibly parking his second vehicle in the parking slot No.38 which was allotted to other member of the society of his own use. Respondent No.5 was already having one car parking space allotted to him by the Society. Therefore as per the General Body resolutions the penalty was imposed on Respondent No.5. A dispute was filed by Respondent No.5 before the Cooperative Court but the same is pending. By letter dated 13/08/2016 Respondent No.5 demanded draft minutes and CD of the AGM meeting dated 31/07/2016. Respondent No.5 was called in the society's office and shown him documents demanded by him but he was told that the CD is under preparation. Respondent No.5 started demanding other documents like tenders of works done in society. He wrote a letter dated 15/11/2016 to Respondent No.1 seeking directions to take action against the Petitioners under Section 79 of the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act") for non compliance of the order of Respondent No.1. It is further the case of the Petitioners that a request made by Respondent No.6 herein through his advocate for amalgamation of his two flats has been rejected by Respondent Society on the ground that criminal proceedings are pending against the said flats. Thereafter a complaint was filed before Respondent No.1 seeking directions against the Petitioners for non issuing No Objection

Certificate for amalgamation of the flats. It is the case of the Petitioners that Respondent Nos.5 and 6 herein are in arrears of maintenance. Respondent No.1 accordingly issued a letter to the Petitioners calling upon them to furnish the information to the Petitioners.

3 It appears that Respondent Nos.5 and 6 herein had filed complaints before Respondent No.1 against the managing committee of the said society. Accordingly Respondent No.1 directed the office bearers of the society to submit the books and records for inspection, but the office bearers did not take cognizance of the directions issued by Respondent No.1. Hence Respondent No.1 by order dated 02/05/2017 levied fine of Rs.100/- per day on the Petitioners for non-compliance of the said directions. Thereafter Respondent No.1 issued show cause notice on 18/05/2017 under Section 78(A) of the Maharashtra Cooperative Societies Act, 1960. Thereafter a hearing was given to the parties. By order dated 19/07/2017 Respondent No.1 disqualified the Petitioners from the post of managing committee for one term from contesting election/co-option/ nomination under Section 78(A) of the Act.

4 Being aggrieved by the said order dated 19/07/2017 passed by Respondent No.1, the Petitioners preferred a Revision Application No.347 of 2017 before the Divisional Joint Registrar, Cooperative Societies, Mumbai

Division, Mumbai. The Appellate Authority recorded a finding that the managing committee of the society had failed and neglected to discharge their duties and they have done gross irregularities and have not taken cognizance of the directions issued by the Deputy Registrar. It is observed by the Appellate Authority that the Petitioners have not given satisfactory explanation on the charges framed against them. The Appellate Authority, therefore, by the impugned order dated 08/12/2017 confirmed the order passed by Respondent No.1. It is the said order dated 08/12/2017 passed by the Appellate Authority which is taken exception to by way of the above Writ Petition.

5 The learned counsel appearing on behalf of the Petitioners submitted that both the authorities below have passed the orders without following the principles of natural justice. It is the contention of the Petitioners that Respondent No.1 did not give an opportunity to the Petitioners to submit their explanation before the said order was passed. It is further contended that the directions issued by Respondent No.1 to the Petitioners to pay the fine of Rs.100 each day is illegal as the said orders was passed without being given any opportunity of hearing to the Petitioners.

6 I have heard the learned counsel for the parties. Perused the pleadings and the grounds raised in the above Writ Petition. It appears that the Petitioners did not take any effective steps for following the directions issued

by Respondent No.1 and failed to furnish information to Respondent Nos.5 and 6 herein on whose complaints Respondent No.1 i.e. the Deputy Registrar Co-operative Societies, Mumbai held the Petitioners responsible under Section 79(3) of the Act and directed to pay fine of Rs.100/- per day. The Petitioners did not challenge the said order, hence the said order attained finality. Both the authorities below have concurrently recorded the findings that the Petitioners have made defaults in following the directions issued by Respondent No.1 and therefore the Petitioners were held to be disqualified and/or removed from the committee members and office bearers of the society and debarred from holding any position of the society for further one term. In so far as the contention of the Petitioners that the principles of natural justice are not followed is not correct. It clearly reveals from the record that the notice under Section 79(3) was issued to the Petitioners calling upon them to remain present in the office of concerned Respondent Authority, however, neither they appeared in the office of Respondent No.1 nor they have filed any reply.

7 In the context of the submissions made by the learned counsel for the Petitioners in relation to the order of their removal from the Managing Committee of the Society is concerned, it would be apposite 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 Petitioners is that they have failed to furnish the information to Respondent Nos.5 and 6 herein as also they have failed to follow the directions issued by Respondent No.1. Even they did not challenge the order of Respondent No.1 directing them to pay fine of Rs.100/- per day.

8 A useful reference could be made to the judgment of the Apex Court in Mohd. Yunus v/s. Mohd. Mustaqim and others reported in AIR 1984 SC 38 and especially paragraph 7 thereof which for the sake of ready reference is reproduced herein under :-

“The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of

the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

Apex Court has observed that the High Court does not act as an Appellate Court or Tribunal. It is further observed that the High Court will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct the errors of law in decision. In the present both the authorities below after considering the material on record have passed the orders against the Petitioners.

9 The Appellate Authority, after considering the material on record and having regard to the fact that the Petitioners have failed and neglected to furnish the information as also did not challenge the order imposing penalty of Rs.100/- per day, did not find any reason to interfere with the order passed by the Deputy Registrar and accordingly dismissed the Revision filed by the Petitioners. Hence both the authorities below have recorded concurrent

findings against the Petitioners.

10 Both authorities below have concurrently held against the Petitioners. In so far as violation of principles of natural justice is concerned, the notice was issued to the Petitioners, but they did not appear before the authority and they have never made any grievance about non-issuance of the notice to them. The Petitioners did not challenge the order imposing fine of Rs.100/- per day. The Petitioners by their conduct can be said to have waived the notice.

11 Taking over all view of the matter, the orders passed by both the authorities below cannot be said to be suffering from any illegality or infirmity for this Court to interdict in its writ jurisdiction. Hence no case for interference is made out. The above Writ Petition is accordingly dismissed.

[S. S. SHINDE , J]