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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2209 OF 2019

Naresh H.Kanojia & Ors.

..Petitioners.

V/s.

Bipin Khuman & Ors.

..Respondents.

Mr.Dilip Bagwe I/b. Kantilal Hiralal Kanojia for the petitioners.

Mr.G.S.Godbole with Akshat Shah I/b. RMG Law Associates for respondent No.1.

Mr.Mayur S.Sonawane for respondent No.2.

Mr.S.D.Rayrikar, AGP for respondent Nos.3 to 5.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 26, 2019

P.C.:-

Leave to amend. Amendment to the cause title to be carried out forthwith.

2. Learned AGP appears for respondent Nos.3 to 5 after the amendment is carried out.

3. The petitioners were served with a show cause notice dated November 8, 2017 calling upon them to explain as to why

they should not be disqualified pursuant to the provisions section 75(5) of the Maharashtra Co-operative Societies Act, 1960 [the Act' for short] for failure to hold General Body Meeting thereby pointing out certain reasonable excuse for holding the General Body Meeting. The petitioners replied to the said show cause notice and also requested to grant extension of time to hold General Body Meeting, as is reflected in a communication dated November 21, 2017.

4. The respondent-Deputy Registrar, in exercise of power under Section 75(5) of the Act, vide the impugned order dated January 12, 2018 was pleased to disqualify the petitioners for a period of five years, which order was the subject matter of challenge before the Divisional Joint Registrar. The said authority in exercise of powers under section 154 of the Act while dismissing the revision, confirmed the order passed against the petitioners by the Deputy Registrar. As such this petition.

5. Submission of learned counsel for the petitioners are, it was election period and failure of earlier managing committee or the new elected committee needs to be appreciated. According to him, both the authorities have lost sight of the fact that in view of

the aforesaid there was a reasonable excuse. That being so, the petitioners need not have been disqualified under section 75(5) of the Act. It is also the contention of the petitioners that presuming without assuming that the petitioners have committed default as contemplated under section 75(5) of the Act, the maximum disqualification for a period of five years is ordered without recording any willful or deliberate default in compliance of section 75 of the Act. A further submission is, the authorities should have appreciated that under the bye-laws, office bearers viz. President, Secretary, etc. are entrusted with the duties to call meeting. According to the petitioners, in absence of a preliminary inquiry to the aforesaid effect and the findings as regard the duty of office bearers to hold the General Body Meeting under bye-laws, the order impugned is not sustainable.

6. Mr.Godbole, learned counsel appearing for respondent No.1 would urge that the impugned order passed by both the authorities are speaking order and all the facets of the matter were considered by the authorities. According to him, the Model Bye-Law No.138(17), the fact that petitioner No.1 was Secretary of the outgoing committee are duly appreciated. It is also urged by

Mr. Godbole that the order impugned *prima facie* records default committed by the petitioners in discharge of their duties in terms of section 75 of the Act and as such, the orders are just and proper.

7. Considered rival submissions.

8. At the outset, it is required to be noticed that in 2011 the Co-operative Housing Society was formed and the first elected body managed the affairs of the society for a period from 2012-2017. The tenure of the first elected body expired on August 25, 2017.

9. It is claimed that on July 10, 2017 and July 20, 2017 petitioner No.1 claimed to have issued notice to respondent No.4 for ordering holding of the meeting of the society.

10. On July 26, 2017 respondent-Deputy Registrar fixed the date of election and declared the election programme on August 2, 2017 against which the elections were held on September 10, 2017.

11. Pursuant to the elections held on September 10, 2017, on September 12, 2017 the petitioners claim to have been elected as Chairman, Secretary, Treasurer, etc. and on September 29,

2017 a prayer was made for holding of the General Body Meeting with respondent No.4-Deputy Registrar and on October 11, 2017, the newly elected managing committee issued notice of General Body Meeting.

12. In the aforesaid backdrop, respondent No.1 by a complaint October 30, 2017, sought disqualification of the petitioners under section 75(5) of the Act though a General Body Meeting was held on November 5, 2017 in which it is informed that respondent No.1-complainant actively appears to have participated.

13. Pursuant to aforesaid complaint, a show cause notice came to be issued to the petitioners on 8, 2017 which was responded to by the petitioners vide their replies dated November 21 to November 22, 2017.

14. On January 12, 2018 the order of disqualification came to be passed in exercise of powers under section 75(5) of the Act which was confirmed in revision by respondent No.5 on October 12, 2018.

15. The aforesaid factual matrix if looked into in the backdrop of the charge of disqualification against the petitioners,

whether there was a reasonable excuse spelt out by the petitioners for not holding a General Body Meeting within the period of six months from the close of financial year looked into or atleast no findings are recorded to that effect. Apart from above, though the authorities have taken recourse to the provisions of Model Bye-Laws No.138(17), so as to make an observations against the petitioners, some of whom were members of the earlier committee also, however, no findings are recorded as to whether the society has its own bye-laws and if not as per Model Bye-Laws the role attributed to each of the petitioners, who are disqualified in the matter of their responsibility in conveying the General Body Meeting. Power to convene the meeting under the bye-laws and Co-operative Housing Society Act, having regard to duty vested in petitioners should have been looked into and analysed by the authorities before passing an order of disqualification of elected member. Apart from above, the period of disqualification of elected member prescribed under sub-section (5) of section 75 of the Act is taken recourse to. However, there are no specific findings recorded as as regards serious conduct which warrants maximum period of disqualification. Though the charging section

contemplates five years maximum disqualification, however, there is no embargo on the right of the authorities to order a minimum period of disqualification. The authorities have failed to record the justification of awarding maximum period of disqualification.

16. Apart from above, though Mr. Godbole may be right in pointing out that petitioner No.1 was the Secretary in the erstwhile elected committee whereas other petitioner was treasurer, however, petitioner's position in the outgoing committee by itself will not incur disqualification for not holding the General Body Meeting, unless the due finding of their responsibility, duties and willful or deliberate in the matter of holding General Body Meeting are recorded.

17. As such, for the reasons disclosed above, both the orders impugned i.e. the one passed by the Deputy Registrar January 12, 2018 disqualifying the petitioners under section 75(5) of the Act for a period of five years, confirmed in revision by respondent No.5 on October 23, 2018 and hereby quashed and set aside.

18. It shall be open for the Deputy Registrar to decide the proceedings taken out against the petitioners under section 75(5)

of the Act afresh after granting the petitioners an opportunity of hearing after furnishing appropriate documentary evidence. It is expected by the Deputy Registrar to record findings without being influenced by his own order.

19. The petition stands partly allowed in the above terms.

20. At this stage, Mr.Godbole submits that the order passed by this Court allowing the petition be stayed for a period of four weeks.

21. I hardly see any convincing reason to stay the order. It will be the committee of appropriate forum looking after the affairs of the society.

(NITIN W.SAMBRE, J.)