

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 950 OF 2013**

Meena Hasmukh Soni

...Petitioner

Versus

Office of Deputy Registrar, Cooperative Societies,
P-Ward & Ors

...Respondents

Mr Vishal Thaker, *with Anjali Trivedi, i/b V Thakers' Advocates, for the Petitioner.*

Ms Uma Palsuledesai, AGP, *for the Respondent-State.*

Mr Ashwin Sakolkar, *with Ms Rupali Adhate, for MCGM.*

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 4th June 2019

PC:-

1. The Writ Petition is presented by the Petitioner on the footing that she is a member of a Cooperative Housing Society.
2. The managing committee managing and administering the affairs of the Cooperative Housing Society of which the Petitioner claims to be a member was superseded by an order passed by the Registrar of the Cooperative Society, Maharashtra State.

3. The Petitioners before us are contending that the 2nd Respondent was appointed by the Registrar as an Administrator. Instead of administering and managing the affairs of the society he grossly mismanaged and mal-administered the same. On account of his acts of omission and commission the society has suffered a loss, specifically because the 3rd Respondent to this Petition was allotted a parking space by this Administrator. That parking space came to be enclosed and instead of that being used for parking of cars, a commercial user was commenced. All this was contrary to the provisions of municipal laws. Further, the Administrator can only carry on day-to-day affairs and is not empowered to take major policy decisions. This is a major policy decision taken by the 2nd Respondent and therefore by a writ of mandamus or appropriate writ, order or direction he can be commanded by this Court to forthwith restore the area to the society as a parking space and stop the commercial user therein. The person concerned namely the 2nd Respondent was discharging a public function and a public duty. He was appointed under a statutory order. For all these reasons, a writ would go to him.

4. It is fairly stated by Mr Thaker appearing for the Petitioners that today the position has changed. The major change is that the 2nd Respondent ceases to be an Administrator and the affairs of the society are restored to its managing committee which is elected afresh. That Managing Committee of the cooperative housing society is not ratifying the acts of the Administrator but opposing the same.

5. After having perused this petition with all the annexures thereto, so also the Affidavits placed on record, we have found that there is a further glaring fact which has not been highlighted in this Writ Petition. It is not only the 3rd Respondent who is the beneficiary of the alleged act of omission and commission of the Administrator but there are two others who also have derived benefits of his acts. They have also similarly been allotted parking spaces. These persons are not brought before this Court nor any details including of their acts are highlighted before us. The 3rd Respondent pertinently is a member of the Arihant Cooperative Housing Society Ltd of which the Petitioners are also members. If members are allowed commercial user of the premises then the

members can be proceeded against in a competent Civil Court or if permissible under Section 91 of Maharashtra Cooperative Societies Act 1960, in a Cooperative Court.

6. The foundation for bringing the Writ Petition is that against the acts of omission and commission of the Administrator there is no remedy in the Cooperative Societies Act. The Petitioners have therefore necessarily to approach this Court.

7. This argument is entirely misconceived.

8. Section 78 of the Maharashtra Cooperative Societies Act 1960 reads as under:

"78. Power of suspension of committee. - (1) If, in the opinion of the Registrar, the committee makes a persistent default in performance of its duties or is negligent in the performance of its duties or is otherwise not discharging its functions properly and diligently, or there is a stalemate in the constitution or functioning of the committee, occasioned by resignation, disqualification of members of committee or otherwise, the Registrar, after giving the committee an opportunity of showing cause, in writing, if any, within fifteen days from the date of receipt of notice and after giving reasonable opportunity of being heard and after consultation with the federal society to which

the society is affiliated, comes to a conclusion that the charges mentioned in the notice prima facie exist, but are capable of being remedied with, he may by order,-

(i) keep the committee under suspension for such temporary period, not exceeding six months as may be specified in the order; and

(ii) appoint an administrator or committee of administrators consisting of three or more members of the society otherwise than the members of the committee so suspended in its place or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society:

Provided that, nothing in this sub-section shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government:

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:

Provided also that, in case of society carrying on the business of the banking, the provisions of this clause shall have effect as if for the words "six months" the words "one year" had been substituted:

Provided also that, the Registrar shall have the power to change the committee or any member thereof or Administrator appointed, at his discretion even before the expiry of the period specified in the order made under this section:

Provided also that, such federal society shall communicate its opinion to the Registrar within forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the order of suspension and the Registrar shall be at liberty to proceed further to take action accordingly.

(2) The administrator or committee of administrators, as the case may be, so appointed under clause (ii) of sub-section (1), shall submit a report to the Registrar within such period as may be specified in the order as to the remedial measures taken and after going through the report or any other material placed on record, if the Registrar is satisfied that the charges mentioned in the notice are made good or remedied, he shall by order revoke, the order of suspension and direct the administrator or the committee of administrators to handover the management to the suspended committee with immediate effect.

(3) When a notice is issued against any committee or a member under subsection (1), if resignation from any office is tendered by the committee or a member, it shall not be valid or effective until two months have elapsed from the date of issue of the notice or until it is permitted to be accepted by the Registrar, whichever is earlier.

(4) The administrator or committee of administrators so appointed shall, subject to the control of the Registrar and such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the

society and shall arrange for conduct of the election, through the State Co-operative Election Authority, within the period specified and handover the management to the newly elected Committee in accordance with the Act, rules and by-laws of the society. The administrator or committee of administrators so appointed as aforesaid, shall notwithstanding anything contained in the by-laws, have power to call a special general body meeting of the society to review or reconsider the decisions or the resolutions taken or passed at the general body meeting called by the previous committee or to endorse the action taken by it.

(5) The conditions of the service of the administrator shall be fixed by the Registrar which shall include the remuneration payable to him and expenses of management. Such remuneration and expenses shall be payable out of the funds of the society within such time and at such intervals as the Registrar may fix, and if such remuneration or expenses are not paid within such time or at intervals, the Registrar may direct the person having custody of the funds of the society to pay to the administrator or committee of administrators such remuneration and expenses in priority to any other payments, except land revenue, any arrears of land revenue, or any sum recoverable from the society as arrears of land revenue, and he shall, so far as the funds to the credit of the society allow, comply with the orders of the Registrar.

(6) All acts done or purported to be done by the administrator or committee of administrators during the period the affairs of the society are carried on by

the administrator or committee of administrators appointed under sub-section (1) shall be binding on the new committee.]"

9. A bare perusal of this section would indicate that there is conferred in the Registrar the power of suspension of committee. Sub-section (1) can be resorted to by the Registrar when he passes an order which inter alia permits appointment of a Administrator or committee of Administrators. It is therefore clear that the Registrar's power to suspend the Managing Committee includes within it a power to put the Administrator in charge of the society. If so appointed, the Administrator or Administrators have to report to the Registrar and that is clear from sub-section (2) of Section 78. The Registrar has been empowered to issue directions to the Administrators, as also hand over the management to the suspended committee in the event the Registrar finds the charges mentioned in the notice are made good or remedied. In the event of notices issued, we find from a perusal of sub-section (4) that once the committee is suspended and a Administrator or a committee of Administrators is appointed, they have act subject to the control of the Registrar. They have to take instructions from the Registrar. It is

subject to that they have a power to exercise any of the functions of the committee. They have therefore necessarily to act in terms of these provisions of the law and they have also to uphold the interest of the Cooperative Society. The principles of cooperation bind them. If any decisions of the Administrator or committee of Administrators are contrary to the law, nothing prevents parties like the Petitioners from approaching the Registrar and bringing to his notice the acts of omission and commission of the Administrator. It is therefore clear that the Administrator holds office subject to the Registrar's orders. It is only then that acts purported to be done or done by him are protected and bind the committee. To our mind therefore the argument of Mr Thaker that the Petitioners have no remedy but to approach this Court in Writ jurisdiction is without any merit.

10. The Petitioners are possibly related to Respondent No. 3. It is now admitted that the 3rd Respondent is the sister-in-law of the Petitioner No. 1. The 2nd Petitioner is the nephew of the 3rd Respondent. This has been suppressed in the Petition. The garage was allotted according to Respondent No. 3 under an agreement

with the builder whereas the Petitioner say that this is not the position but it is the society under whose directions the parking spaces are allotted.

11. These are disputed questions and when the allegations of fraud and forgery are levelled inter alia against the Administrator, then, necessarily the parties to the transaction or deals of the Administrator have to be brought before the competent Court. It is that Court alone which is empowered to grant the reliefs as prayed in this Petition. The Petition would have to establish and prove the allegations of fraud, forgery etc. To our mind, that is not possible in our limited jurisdiction.

12. For the aforesaid reasons and holding that the Petition involves disputed questions of fact, we find that it is entirely misconceived and is dismissed. No costs.

(G. S. PATEL, J)

(S. C. DHARMADHIKARI, J)