

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.1047 OF 2019

Santosh Shridhar Mayekar And 9 Ors.

....Petitioners

vs

Deputy Registrar, Co-Operative Societies
T-Ward And 14 Ors.

...Respondents

.....

Mr. Nitesh S. Acharya, for the Petitioners.

Mr. Manish Upadhye, AGP, for Respondent Nos.1 and 13 to 15.

Mr. S.B. Pawar, i/b. Ms. Shraddha Kulkarni, for Respondent Nos. 2 to 4.

Mr. S.S. Desai, i/b. Ms. Anupama Gawade, for Respondent Nos. 5 to 7
and 9 to 12.

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CORAM : S.C. GUPTE, J.

DATED: 9 APRIL 2019

P.C.:

1. This writ petition challenges an order passed by Divisional Joint Registrar of Co-operative Societies (Respondent No.13) in an appeal challenging an order passed by Deputy Registrar of Co-operative Societies (Respondent No.1) under Section 77A of Co-operative Societies Act ("Act"). By this order, the Deputy Registrar had appointed authorised officers to manage the affairs of the society till elections of a new managing committee of Respondent No.2 society, of which the Petitioners are members.

2. The order of the Deputy Registrar under Section 77A was passed after issuing a show cause notice. The order was on the basis that

out of 17 members of the managing committee of the society, 9 had resigned and, as a result, there was no corum available in the committee (the corum being of 9 members). The record of the case does indicate that 9 managing committee members of Respondent No.2 society had resigned. (It is claimed that one of these 9 members withdrew his resignation later.) The order of the Deputy Registrar has been in challenge in an appeal before the Divisional Joint Registrar, Co-operative Societies. The Petitioners filed an application in that appeal for interim stay of appointment of authorised officers. This application has been rejected by the Divisional Joint Registrar. The present petition challenges that order. It is submitted that the Petitioners tried to prefer a revision from the impugned order of the Divisional Joint Registrar to the State, but the Hon'ble Minister of Cooperation, who hears these revisions, was not available due to election work and, as a result, the Petitioners have been constrained to approach this Court in its writ jurisdiction.

3. It is prima facie believable that 9 members of the managing committee of Respondent No.2 society had in fact tendered their resignation. Prima facie, there is nothing demonstrably wrong with the order of the Deputy Registrar appointing authorised officers to manage the affairs of the society, in the premises, under Section 77A of the Act. The impugned order of the appellate authority, i.e. Divisional Joint Registrar, accordingly does not suffer from any error of jurisdiction or infirmity in exercising such jurisdiction calling for judicial scrutiny under Articles 226 or 227 of the Constitution.

4. Learned Counsel for the Petitioners submits that there is no

power in the Deputy Registrar under Section 77A to set aside the election of Petitioner Nos. 1 to 9, they being elected members of the managing committee of the society. The Deputy Registrar has not set aside anyone's election. He has come to a finding that there being no corum available in the managing committee of the Respondent society, its affairs must be managed through officers appointed under Section 77A.

5. It is, secondly, submitted that the elected committee members possess a constitutional right of a five years' tenure and their removal is prohibited under Article 243-ZL of the Constitution of India. There is no merit in the contention. Article 243-ZL, which comes within Part IX-B of the Constitution, which makes provisions for cooperative societies, provides for a restriction on supercession, or keeping under suspension, of any board of a cooperative society (managing committee being covered under the expression "board") for a period exceeding six months. This provision is a non-obstante provision and has precedence over every other law for the time being in force. This main provision contained in clause (1) of Article 243-ZL is subject to a proviso, which allows the board to be superseded or kept under suspension contrary to the mandate of clause (1) in five stated categories of cases set out in the proviso. There is a further proviso, which qualifies the first proviso, which provides that supercession or suspension of such board cannot be ordered, where there is no Government shareholding or loan or financial assistance or any guarantee by the Government. It is pertinent to note that there is no suspension ordered in the present case having regard to Article 243-ZL. What has been done in the present case is appointment of authorised officers on account of a stalemate in the working of the

committee or the committee having ceased to function resulting into a vacuum in the society's management. In such an eventuality, the Registrar or his nominee is authorised, under Section 77A of the Act, either *suo motu* or on an application of any officer of the society, to appoint any other member of the society to fill the vacancy or a committee of one or more authorised officers, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office. In the premises, there is no case of the Registrar or his nominee having committed any contravention of Article 243-ZL in appointing authorised officers to manage the affairs of the society.

6. It was, thus, clearly within the power of the Divisional Joint Registrar to have assessed the *prima facie* merits of the Petitioners' appeal and refused the interim stay applied for. The Divisional Joint Registrar could not be said to have acted beyond his jurisdiction or authority or committed any error of law in passing the impugned order.

7. There is, accordingly, no merit in the writ petition. The writ petition is dismissed.

(S.C. GUPTE, J.)