

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1599/2019

Amin Ramjan Ali Lakhani and another

..Vs..

Divisional Joint Registrar, Co-operative Societies, Amravati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.C. Dharmadhikari, Advocate for the petitioners.
Ms. Geeta Tiwari, A.G.P. for respondent Nos.1 and 2.
Shri S.J. Kadu, Advocate for respondent Nos.5 and 6.

CORAM : Z.A. HAQ, J.

DATED : 1.8.2019.

Heard.

2] By order dated 7th July 2017, the Assistant Registrar, Co-operative Societies appointed the Authorized Officer to manage the affairs of the respondent No.3 - Co-operative Society. The order dated 7th July, 2017 records that this step was taken by the Assistant Registrar, Co-operative Societies as the Managing Committee had committed several defaults in discharging their duties including non-submission of accounts and holding elections. This order was challenged by the respondent Nos.4 to 7 by filing appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (for short "the Act of 1960"). This appeal is allowed by the Divisional Joint Registrar by the

impugned order. One of the reason for quashing the appointment of Authorized Officer is that the Assistant Registrar had not published notice as required by the first proviso below Sub-Section (1) of Section 77A of the Act of 1960, before issuing the order appointing the Authorized Officer. Learned Advocate for the petitioners submitted that the second proviso below Sub-Section (1) of Section 77A of the Act of 1960 enables the Authority to dispense with the publication of notice on the notice board of the Society if the Authority is satisfied that immediate action is required to be taken or it is not reasonable and practicable to publish such notice. It is further submitted that the appeal filed by the respondent Nos.4 to 7 was filed after the prescribed period of limitation and delay was condoned by the Appellate Authority without issuing notice to the petitioners and hence the impugned order is unsustainable.

3] In the present case, the petitioners have not been able to point out that such emergent situation prevailed at the time of appointment of Authorized Officer that the Assistant Registrar was required to issue the order appointing the Authorized Officer immediately without complying with the mandate of first proviso below Sub-Section (1) of Section 77A of the Act of 1960. Learned Advocate for the respondent Nos.5 and 6 has pointed out that this issue is already considered by this Court while deciding the Writ Petition No.3208/2016 (Wasudevrao Jaywantrao Shinde V/s. The Divisional Joint Registrar of Co-operative Societies, Amravati and

others) dated 11th August, 2016. Learned A.G.P. has also supported the submission made by Advocate for the respondent Nos.5 and 6. In the above judgment, it is held that the requirement of publishing notice on the notice board of the Co-operative Society before taking drastic action of appointing Authorized Officer and handing over affairs of the Co-operative Society to the Authorized Officer is provided in the provision to enable the members of the Co-operative Society to point out the reasons for not holding the elections or for non-submission of accounts or delay in submission of accounts. In the present case, as Authorized Officer is appointed without complying with the mandate of first proviso below Sub-Section (1) of Section 77A of the Act of 1960, the order issued by the Assistant Registrar is illegal and unsustainable and it is rightly set aside by the Divisional Joint Registrar.

4] As far as other contention regarding condonation of delay without issuing notice to the petitioners is concerned, there is no dispute that the Appellate Authority has the power to condone the delay and the Appellate Authority has exercised the power and has condoned the delay. There may be irregularity while exercising the power and condoning the delay, but the petitioners have not challenged that order by which the delay is condoned.

5] In view of the above, I see no reason to interfere with the impugned order. Hence, the writ

petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.