

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO.8089 OF 2021

NANDKUMAR LAXMAN DAKHORE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

...
Advocate for Petitioners : Mr. Pawade Nilkanth R.
AGP for Respondents/State: Mr. S. W. Munde
Advocate for the Respondent No.5: Mr. Shahaji B. Ghatol Patil
...

CORAM : AVINASH G. GHAROTE, J.

DATE : 4th August, 2021

PER COURT :

. Heard Mr. N. R. Pawade, learned counsel for the petitioners, Mr. S. W. Munde, AGP for Respondents Nos.1 to 4 and Mr. Shahaji Ghatol Patil, learned counsel for Respondent No.5.

2 The challenge is to the order dated 03rd March, 2021, passed by the Respondent No.1, whereby the appeal filed by Respondent No.5 against the order dated 08.12.2020, has been set aside, and by allowing the appeal, the Misc. Application No.50 of 2020, filed by Respondent No.6 and the present petitioner has been dismissed. The basic ground for passing such an order, is that the

petitioner, as well as Respondent No.6 were not members of Respondent No.5-Society, and, therefore, had no locus to institute and maintain any proceedings *vis-a-vis* the issue of de-registration of Respondent No.5-Society, which was registered in 2009 and has been working for 11 long years when the Misc. Application No.50 of 2020 came to be filed. Admittedly, nothing has been placed on record to connect the petitioner and Respondent No.6 with the Respondent No.5-Society or its working.

3. Learned counsel Mr. Pawade, for the petitioners, submits that under Section 21-A of the Maharashtra Co-operative Societies Act, 1960 (“MCS Act” hereinafter for short), the Registrar has suo-moto powers to inquire into an issue regarding registration of the Society on account of misrepresentation and other grounds and, therefore, an application was made to the Registrar, as a result of which, Misc Application No.50 of 2020 was registered.

4. The existence of suo-moto powers would not permit the conversion of the inquiry in that regard under Section 21-A of the MCS, Act into an adversarial litigation for that is not what is contemplated by the language of Section 21-A of the MCS Act.

5. Mr. Pawade, learned counsel for the petitioner, seeks time till 02.30 p.m. to place on record judgments relating to the locus.

6. List the matter at 02.30 p.m.

(AVINASH G. GHAROTE, J.)

7. Mr. Pawade, learned counsel for the petitioner places reliance upon **Waghamay Mahila Machchimar Sahakari Maryadit Vs. Commissioner of Fisheries and Ors., 2019 5 BCR, 13** in support of his submission. It is however material to note, that the issue is not about whether de-registration can be ordered or not, for the Registrar, on his own under the powers conferred upon him u/s 21-A of the MCS, Act, has to the power to do so. The issue is whether such an action, can be turned into adversarial action at the behest of the petitioners. **Waghamay Mahila Machchimar Sahakari Maryadit Vs. Commissioner of Fisheries and Ors** (Supra), does not dwell upon this position, and therefore is of no assistance to the submission canvassed by Mr. Pawade, learned counsel for the petitioner.

8. Mr. Shahaji, learned counsel for the Respondent No.5, has placed reliance upon **Ravi Rao Gaikwad and Ors. Vs. Rajajinagar Youth Social Welfare Asscn. & Ors., AIR 2006 SC 191** and **Kasturi Vs. Iyyamperumal & Ors., AIR 2005 SC 2813, M/s. Gammon India Ltd. Vs. Union of India & Ors., AIR 1974 SC 960**, on the authority of an intervener to contend, that a third party has no right, whatsoever.

9. In view of the admitted position as recorded above, that the petitioner or the respondent No.6 are neither the members of the respondent No.5-Society, nor are in any way concerned with its business, it is held, that the petitioners, have no locus, nor cause of action, to file Misc. Application No.50/2020. The petition is therefore without any merits and is accordingly dismissed.

10. Needless to say, that in case, the Registrar u/s 21-A of the MCS Act, finds that there is any misrepresentation in the matter of registration of the Respondent No.5-Society, he shall be obliged to act upon the same and take appropriate action, as contemplated by Section 21-A, to the extent permissible in law.

(AVINASH G. GHAROTE, J.)