

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

971 WRIT PETITION NO.8742 OF 2021

Panchshil Co-Operative Housing
Society Limited,
Trough its Secretary
Vitthal s/o Sakharam Navgire,
Age 76 years, Occ. Pensioner,
R/o. 4-18-85, Mill Corner, Bhoinwada,
Aurangabad.

... Petitioner

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Co-Operative, Marketing and Textile
Department, Mantralaya, Mumbai-32.
- 2) The Deputy Registrar,
Co-Operative Societies, Aurangabad.
Tq. & Dist. Aurangabad.
- 3) The Liquidator,
Panchashil Co-Operative Housing
Society Limited, Bhavsingpura,
Aurangabad.
Head Clerk attached to Deputy Registrar
Co-Operative Societies, Aurangabad
by name Y.U. Deokar.
- 4) The District Deputy Registrar,
Co-Operative Societies, Aurangabad.
Tq. & Dist. Aurangabad.

...

Advocate for Petitioner : Gangakhedkar Shailendra S
AGP for Respondents/State : Mr. K.B. Jadhavar.
Advocate for Respondents No. 3: Mr. Kawale h/f Mr.Suryawanshi
Kamlakar J.

CORAM : MANGESH S. PATIL, J.
DATE : 14.10.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. At the request of the parties the matter is heard finally at the stage of admission.

2. The petitioner is a Society governed by the provisions of Maharashtra Co-Operative Societies Act 1960 (hereinafter 'the Act') duly registered as such under that Act. In purported exercise of the powers under Section 102(1)(c)(ii) and (iv) of the Act, respondent No. 2 Sub Registrar, by the order dated 31.12.2020 passed an interim order directing winding up of the petitioner Society and appointing the respondent No. 3 as a Liquidator under Section 103 of the Act. By the impugned order dated 27.01.2021 he confirmed the interim order and directed winding up of the petitioner Society confirming appointment of respondent No. 3 as the Liquidator.

3. The learned A.G.P and the learned advocate Mr. Kawale h/f Mr. Suryawanshi representing the respondent No. 3 have raised preliminary objection regarding availability of an alternate remedy in the form of appeal under Section 104 and Revision under Section 154 of the Act.

4. As is pointed by the learned advocate Mr. Gangakhedkar, though a provision of appeal is made in Section 104 of the Act to challenge the orders passed under Section 102, the proviso to Sub Section (1) of Section 104 admits of exception and lays down that the orders passed under Section 102 by resorting to sub Clauses (i)(ii) and (iii) of clause (c) of Sub section (1) would not be appealable.

5. Relevant provisions of Sections 102, 104 and 154 of the Act read thus :

Section 102- Winding up

(1) If the Registrar, –

(a)

- (b) ...
- (c) of his own motion, in the case of society which--
 - (i) has not commenced working, or
 - (ii) has ceased working, or
 - (iii) possesses shares or members' deposits not exceeding five hundred rupees, or
 - (iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the by laws.

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society and to the creditors of the society, if any of being heard, may issue a final order vacating or confirming the interim order.

Section 104 - Appeal against order of winding up

(1) The committee, or any member of the society, ordered to be wound up may prefer an appeal against the final order of winding up within two months from the date of the issue of the order made under section 102,--

- (a) if made by the Registrar, or the Special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government;
- (b) if made by any person other than the Registrar, or special or Additional or Joint Registrar on

whom the powers of the Registrar are conferred, to the Registrar;

Provided that, no appeal shall lie against an order, issued under sub-clause (i), (ii) or (iii) of clause (c) of sub-section (1) of Section 102.

(2) No appeal from a member under this section shall be entertained unless it is accompanied by such sum as security for the costs of hearing the appeal, as may be prescribed.

Section 154 - Revisionary powers of State Government and Registrar—

(1) The State Government or the Registrar, suo-motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2-A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 [or Section 154B-49] [or certificate issued by the Liquidator under Section 105] unless the applicant deposits with the concerned society, fifty percent, amount of the total amount of recoverable dues.

Provided that, in case of revision where revisional authority has granted a stay to the recovery of dues, the authority shall as far as may be practicable, dispose of such revision application as expeditiously as possible but not later than six months from the date of first order.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

3A) The revisional authority, in order to prevent the ends of justice being defeated, may pass such interim orders including order of stay against the impugned order, pending the decision and final hearing of the Revision Application :

Provided that, if any interim order has been passed by the revisional authority without hearing the other side, the revisional authority shall decide such application within a period of three months and pass the necessary orders on merits after giving an opportunity of being heard and for the reasons to be recorded in writing.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.

6. As can be seen from the interim order as well as the final order passed by the Sub Registrar, he has passed these orders in the purported exercise of the powers under clauses (ii) and (iv) of Clause (c) of sub section (1) of Section 102 of the Act. If that be so, so far as the powers sought to be exercised under clause (ii) of sub section (1) of Section 102 of the Act no appeal would lie under Section 104 in view of the proviso to sub Section (1).

7. As far as the provision of Revision contained in 154 of the Act is concerned though a remedy of Revision is available, the provision specifically mentions that only such order would be revisable where no appeal lies against the decision or the order. Consequently, to the extent the impugned orders have been passed by exercising the power under clause (iv) of clause (c) of sub Section (1) of Section 102, since a power exercisable under that provision is appealable under Section 104, the Revision would not lie.

8. The Sub Registrar has exercised the powers under clause (ii) as well as clause (iv) of clause (c) of sub Section (1) of Section 102 of the Act simultaneously, while passing the orders which are under challenge in this Writ Petition. The petitioner cannot be expected to take a decision as to whether it would go for an appeal only in respect of a part of the order and resort to a Revision in respect of the other part. It is in view of such peculiar state of affairs, in my considered view, it cannot be said that an efficacious remedy of appeal under Section 104 or revision under Section 154 is available for the petitioner. The objection, raised by the learned A.G.P and the learned advocate for the respondent No. 3, therefore, on this count does not sustain.

9. Now turning to the merits, suffice for the purpose to bear in mind that the petitioner is invoking the writ jurisdiction of this Court while questioning the impugned order. It is trite that this Court will not venture into the disputed questions of facts and would only be concerned with the decision making process leading up to the impugned decision.

10. Bearing in mind the aforementioned principle it is necessary to note that in view of the powers conferred on a Sub Registrar under Section 102 of the Act , in view of clause (c) he is entitled to pass an interim order on his own motion under the four circumstances mentioned therein. Whether he was justified in taking such decisions in the matter in hand is a matter

which need not be gone into and decided at this stage.

11. It is pertinent to note that by virtue of sub Section (2) of Section 102 of the Act, having once passed some interim order under sub Section (1) the Registrar is expected to give an opportunity to the Society and even to the Creditors of the Society of being heard before issuing a final order either vacating or confirming the interim order. It also lays down that the interim order has to be communicated in the prescribed manner to the society.

12. It is the case of the petitioners that no such interim order was ever served to the Society.

13. In reply on behalf of the respondents/State a reference is made to the communication dated 08.01.2021 (Exh. R2) showing that in order to comply with this provision this was the communication that was addressed to the Registrar by the Liquidator informing that on enquiry by the Liquidator the Chairman of the Society was learnt to have died, whereas, the Secretary was no longer residing at the address and has migrated to Mumbai since three to four years. If this is the communication by the Liquidator to the Registrar, one need not delve much to observe and conclude that the interim order passed under Section 102 of the Act though was required to be communicated to the petitioner Society, it was not. Merely on the basis of communication from the Liquidator the Registrar has proceeded to confirm the interim order. It is indeed a matter of clear deviation by the quasi judicial authority from the principles of natural justice.

14. Besides, one cannot comprehend as to how the respondent No. 3 Liquidator could have exercised the power which vested in respondent Sub Registrar to effect the service of the interim order. It is settled principle that when law requires the powers to be exercised by an authority in a specified manner, it has to be exercised strictly in the manner as prescribed

by the provisions. Instead of the Sub Registrar serving the interim order to the petitioners it is the Liquidator who tried to comply with the provision.

15. Independently, there is nothing on the record to demonstrate about any attempt having been ever made by the Sub Registrar to communicate the interim order to the petitioner. In the absence of which, he would not derive the power to confirm or revoke the interim order. Therefore, on this ground alone, the impugned orders having been passed without following the principles of natural justice cannot sustain in law.

16. One can gainfully refer to the decision of the Division Bench of this Court in case of **Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd & etc. Vs. State of Maharashtra and others; 2004(3) Bom. C.R. 889**. In similar set of facts the Division Bench has struck down the final order passed under Section 103 of the Act for non compliance with the mandate of service of the interim order.

17. In the result, the Writ Petition is allowed. The impugned final order passed under Section 103 of the Act is quashed and set aside. The petitioner may now appear before the Registrar on 15.11.2021. He shall serve a copy of the interim order to it on that day. The petitioner may thereafter put up its case before the Registrar and after giving it sufficient opportunity of being heard he may pass a fresh final order under Section 103.

18. The Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)

mkd/-