

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION ST. NO. 5581 OF 2020
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WRIT PETITION ST. NO. 5582 OF 2020
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WRIT PETITION ST. NO. 5592 OF 2020
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WRIT PETITION ST. NO. 5870 OF 2020
WITH
WRIT PETITION ST. NO. 5871 OF 2020**

Late Aalamkhan Pathan Krishna Sahakari
Pani Purvatha Mandali Mydt. Alas, Tal. Shirol,
Dist. Kolhapur .. Petitioner
vs.

Ld. Divisional Joint Registrar, Co-Operative
Societies, Kolhapur Division, Kolhapur & Ors. .. Respondents

Mr. Manoj Patil for the Petitioner.

Mr. S.H. Kankal, AGP a/w Mr. S.D. Rayrikar, AGP a/w Mr. S.L.
Babar, AGP a/w Mr. P.V. Nelson Rajan, AGP a/w Mrs. M.S. Bane,
AGP a/w Mrs. V.S. Nimbalkar, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 4, 2021

P.C.:-

Heard learned counsel for the parties.

2. By these Petitions filed under Article 227 of the Constitution of India the Petitioner challenges an order dated 17.03.2020 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur rejecting the Revision Application filed by the Petitioner. The Petitioner had filed the Revision challenging an order dated 20.03.2019 passed by the Respondent No.2-Assistant Registrar, Co-operative Societies granting membership to the Respondent No.3 under Section 23 of the Maharashtra Co-operative Societies Act, 1960 ('the said Act' for short)

3. Briefly stated the Petitioner-Society is registered on 29.03.1966 under the provisions of the said Act. The main object of the Society is to provide water supply to the farmers/agriculturists within the command area of the Petitioner-Society. The Respondent No.3 is holding land within the command area of the Petitioner-Society.

4. It is the contention of the learned counsel for the Petitioner-Society that the Respondent No.3 orally requested the Society to admit him as a member of the said Society. The Society called

upon the Respondent No.3 to make an application in the prescribed manner for due consideration as per the provisions of the said Act. Learned counsel submits that without there being any application made to the Society, the Respondent No.3 directly approached the Respondent No.2-Assistant Registrar, Co-operative Societies under Section 23 (1A) of the said Act. In the submission of learned counsel for the Petitioner such a course is impermissible. He contended that resort to Section 23 (1A) of the said Act can be had only if the Society refused membership. According to him this is not so in the present case. He contended that the Society only wanted the Respondent No.3 to make appropriate application in the prescribed manner so as to enable the Society to consider the application and grant membership thereafter. Learned counsel submitted that without there being a refusal on the part of the Society in granting membership to the Respondent No.3, an application made to the Respondent No.2 for membership under Section 23 (1A) of the said Act is not maintainable.

5. Learned counsel for the Petitioner submitted that several grounds of challenge were raised to the grant of membership by the Respondent No.2 in their reply and in the Revision preferred before the Respondent No.1. However, none of the grounds

raised have been considered. Learned counsel submitted that even on this count that the submissions made by the Petitioner are not considered, the impugned order deserves to be set aside.

6. Learned counsel for the Petitioner invited my attention to Section 23(1) of the said Act. As is his contention, in the absence of refusal of membership, not only an application under Section 23(1A) of the said Act is not maintainable but consequently even the Appeal to the Respondent No.1 under Section 23(2) of the said Act is not maintainable. He would therefore submit that the order passed by the authorities below is without jurisdiction. Learned counsel for the Petitioner submitted that there are several compliance to be made after which the membership can be granted.

7. Learned AGP appearing on behalf of Respondent Nos.1 and 2 invited my attention to the impugned order. He submitted that the application was made by the Respondent No.3 to the Respondent No.2 by R.P.A.D. which was refused and therefore an application came to be made to the Respondent No.2 by the Respondent No.3. According to him in such circumstances not considering the application which was sent by R.P.A.D. amounts to refusal.

8. I have heard learned counsel for the parties at some length. No doubt the provisions of the said Act prescribes a procedure for making an application for membership. An application for membership was in fact made by the Respondent No.3. It is one of the contention of learned counsel for the Petitioner that the application made is not in consonance with the Resolution passed by the Managing Committee dated 29.04.2018 and the Annual General Body Meeting dated 21.06.2018 pursuant to which the membership fees, entrance fees and share fees were enhanced. From the record and the order passed by the Respondent No.2 it is seen that an application was in fact made by Respondent No.3 for membership. After the Society refused to accept the R.P.A.D. in respect of the application, even the Respondent No.2 forwarded the application for membership to Petitioner-Society.

9. I have gone through the impugned order. A finding has been recorded by Respondent No.2 that Respondent No.3 in fact made an application for membership of the Society by R.P.A.D. which the Society refused to accept. It appears that there was no decision thereon. In such circumstances an application made by the Respondent No.3 to the Respondent No.2, the same was considered on the footing that the membership has been refused.

It cannot be said that the order is perverse or without jurisdiction. The Respondent No.2 has recorded that Respondent No.3 is willing to comply with all the formalities prescribed under the Bye laws. It has further been recorded that even in terms of the Resolution of the Managing Committee on 29.04.2018 and subsequent approval of the Resolution by the Annual General Body dated 21.06.2018, in terms thereof the Respondent No.3 is willing to comply with the formalities and pay the enhanced share certificate fees membership and entrance fees.

10. It is then contended by the learned counsel for the Petitioner that the Respondent No.3 has to file written undertaking about his willingness to participate in the Drip Irrigation Scheme. Having regard to the order passed by the Respondent No.2, it is obvious that the Respondent No.3 will have to comply with all the necessary formalities.

11. Learned Counsel for the Petitioner relied upon the decision of this Court in the case of **New Sion Co-operative Housing Society Ltd. Vs. State of Maharashtra and ors.**¹. However, the said decision has no application in the present facts. The issue in **New Sion Co-operative Housing Society Ltd. (supra)** is in respect of

¹ 2007(1) Mh.L.J. 416

the case where the Society has sufficient cause for declining the membership. The same is not the case in this Petition.

12. Learned counsel for the Petitioner submitted that had the Respondent No.3 filed an appropriate application to the Society, the same could have been considered by the Society. His submission is that instead of making appropriate application to the Society, the Respondent No.3 has directly approached the Respondent No.2 by making an application for membership and thereby unnecessarily involved the Society in a long drawn litigation. No doubt the Society had to face litigation but I am not inclined to interfere with the concurrent orders as the objections of the Petitioner-Society can only be regarded as technical.

13. Learned counsel for the Petitioner submitted that after the grant of membership by the Respondent No.2, some of the members have sold their land and therefore liable for action including cancellation of membership under Section 25A of the said Act. Needless to mention that if any breach is committed of the Bye laws, it is always open for the Society to take appropriate action in accordance with provisions of law. In this view of the matter, as ultimately the issue is grant of a membership to the Respondent No.3, I see no perversity in the order passed by the

authorities below so as to warrant interference in the writ jurisdiction of this court. Subject to the above clarifications, the Writ Petitions stand rejected.

(M.S.KARNIK, J.)

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