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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4657 OF 2021

Alok Kumar Mangalam and Ors.

.. Petitioners

Versus

Hon'ble Minister, Co-operation Relief Rehabilitation
and Ors.

.. Respondents

.....

- Mr. Subir Kumar and Mr. Syed Ahmed i/by M/s. SDS Advocates for the Petitioners.
- Mr. V.S. Gokhale, 'B' Panel Counsel for the State.
- Mr. P.M. Havnur i/by Salunke & Co. for Respondent Nos. 3 to 5.

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**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : 30 SEPTEMBER, 2021.

P. C. :

1. By the present Writ Petition, the Petitioners have prayed for the following reliefs:

- "a. That this Hon'ble Court be pleased to appoint an Administrator to look after the day-to-day affairs of the Respondent No.6 till the elections of managing committee are held by Respondent No.2;
- b. That the Hon'ble Court be pleased to direct to issue directions to convene 'fresh elections' for constitution of new Managing Committee, as the term of the existing Managing Committee elected on 05.10.2016 will expire on 04.10.2021;
- c. The Hon'ble Court be pleased to direct the Respondent No.2 to fill the vacancy in pursuance of the directions passed by the Hon'ble Minister vide its Order dtd. 28.08.2019;
- d. That this Hon'ble Court be pleased to restrain the Respondent Nos. 3 to 5 to act in any capacity and/or take any decisions with respect to the functioning of the Respondent No.6."

2. Briefly stated the facts are as under:-

2.1. Petitioners are members of Respondent No.6 Mahaavir Heritage Co-operative Housing Society Ltd. situated at plot No.3, Kharghar, Navi Mumbai, Tal. Panvel, Dist. Raigad (for short "**the Society**").

2.2. Respondent No.6 Society was registered on 9th February 2015. On 5th October 2016 a Managing Committee of 14 members was elected to over look the affairs of Respondent No.6 Society. However since the Managing Committee failed to hold the Annual General Meeting (AGM) within the prescribed time period for the financial year 2017, the Respondent No.2 issued a show cause notice to the Managing Committee to show cause for not adhering to the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short "**the said Act**"). Hearing was held and thereafter by order dated 27th March 2018 Respondent No.2 declared the members of the Managing Committee as ineligible and disqualified from contesting the Managing Committee election for the next term.

2.3. Respondent Nos.3 to 5 were members of the Managing Committee and therefore stood disqualified under the above order.

2.4. By separate order dated 27th March 2018 (re-written as 28th March 2018) Respondent No.2 appointed Mr. B.D. Ahire, retired Assistant Registrar to act as an Administrator for day to day affairs of Respondent No.6 Society.

2.5. Being aggrieved by the above order, Respondent Nos.3 to 5 challenged the order of their disqualification dated 27th March 2018 before the Respondent No.1 i.e. Minister, Cooperation, Assistance and Rehabilitation, Maharashtra Co-operative Society, Government of Maharashtra. Stay was granted by Respondent No.1 on 15th May 2018 and the Administrator did not take charge, thereby resulting in the affairs being managed by Respondent Nos.3 to 5 alongwith the other Managing Committee members.

2.6. Respondent No.1 by his final order dated 28th August 2019 partly allowed the appeal filed by Respondent Nos.3 to 5, *inter alia*, directing the Assistant Registrar, Co-operative Societies (CIDCO), Navi Mumbai to take action to fill up the vacant posts of Managing Committee members as per the rules.

2.7. Petitioners, being aggrieved by the Respondent No.1's order and the affairs of the Respondent No.6 Society being managed by Respondent Nos.3 to 5 as on date, have therefore approached the Court. Petitioners have also voiced several complaints against the management of the Society by Respondent Nos.3 to 5 and therefore sought appointment of an Administrator for managing the society affairs.

3. We have heard the learned Advocates appearing for the respective parties and perused the pleadings. We have also heard the learned Joint

Registrar through video conferencing today. In substance Respondent No.2 has submitted before us that since the election process has been commenced by the Co-operation Department of the State in respect of Cooperative Housing Societies, the process of filling up of vacancies as directed by the Order dated 28th August 2019 can be started.

4. In view of the above, without adverting to or going into adjudication of the rival submissions, we state that it would be appropriate if the order dated 28th August 2019 passed by the Respondent No.1 is implemented in its true letter and spirit for the benefit of the Respondent No.6 Society so as to redress the grievances expressed by the Petitioners. Respondent No.2 has informed the Court that he has received the election program and would be in a position to appoint an Election Officer for conducting fresh election of Respondent No.6 Society and complete the entire election program within a period of 8 weeks from today.

5. In view of the aforesaid submissions made by Respondent No.2 before us, we pass the following order which is agreed upon by the Petitioners as well as Respondent Nos.3 to 5 through their respective Advocates :

- (a) Respondent No.2 shall appoint an Election Officer to conduct fresh election of the Managing Committee of Respondent No.6 Society strictly in accordance with law and complete the said election program within a period of 8 weeks from the date of

receipt of this order;

- (b) In the event of the election program and appointment of the Managing Committee of Respondent No.6 Society is not completed within the period stipulated in para 6(a) herein above, the Respondent No.2 shall appoint an Administrator to take charge of the affairs of the Respondent No.6 Society and Respondent Nos.3 to 5 and/or any other member in-charge of running the Society shall hand over the charge of the affairs of the society to the said Administrator immediately on his appointment;
- (c) All pending proceedings / complaints, if any, in respect of holding elections of Respondent No.6 Society filed by the Petitioners shall be withdrawn by the members within a period of one week from the date of receipt of this order so as to allow smooth conduct of the fresh election of the new Managing Committee in accordance with law;
- (d) With the above directions, the Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]

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