

Prajakta Vartak

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

**WRIT PETITION NO.5195 OF 2021
WITH
INTERIM APPLICATION NO.2206 OF 2021**

Vasudeo Shrinivas Pandit & Ors.

...Petitioners/Applicants

V/s.

State of Maharashtra & Ors.

...Respondents

Mr. A.G. Pandit for Petitioners/applicants.

Mr. C.D. Mali, AGP for the State/respondent nos. 1 to 4.

Mr. Shantanu Singh i/b. Pegasus Legal for respondent nos. 5 and 6.

CORAM : G. S. KULKARNI, J.

DATE : SEPTEMBER 09, 2021

PC :

1. Heard Mr. Pandit, learned counsel for the Petitioners. Although on the earlier occasion Mr. Jadhav Advocate had stated that he represented Respondent Nos. 5, 6 and 7 and infact extensively argued the matter, today, there is change of Advocate on behalf of Respondent Nos.5 and 6, who states that he is appearing for these Respondents and would file Vakalatnama in the office during the course of the day. His statement is accepted. Mr. Mali, AGP appears for Respondent Nos.1 to 4.

2. The Petitioners, who are members of the Managing Committee of Amrutvel Co-operative Housing Society Limited, 160 Angrewadi, Vitthalbhai Patel, Girgaon, Mumbai-400 004, have filed his Petition praying for the

following substantive reliefs:-

(a). This Hon'ble Court be pleased to issue a suitable writ, order or direction thereby calling for the records and proceedings leading to the aforesaid impugned orders dated 1st October, 2019 and 28th June, 2012 passed by Respondent Nos.4 and 3 respective, and after examining the legality and/or propriety thereof and the conduct and inaction and further action of refusal even to entertain the application for restoration of the aforesaid Appeal and the aforesaid Revision Application and further refusing to grant the orders of stay of both the impugned orders, this Hon'ble Court may be pleased to stay both the aforesaid impugned orders dated 1st October, 2019 and 28th June, 2021 by an order of stay of this Hon'ble Court and the Respondent No.2 may be directed to give urgent and expeditious hearing of the Revision Application filed by the Petitioners and to continue the orders of stay till the final disposal of the Revision Application by the Respondent No.2.

3. Mr. Pandit, learned counsel for the Petitioners has urged that the principal grievance of the Petitioners is qua the Order dated 28th June 2021 passed by the Divisional Joint Registrar, Co-operative Housing Societies, Mumbai Division, Mumbai by which he has dismissed the Appeal No.276 of 2019 filed by the Petitioners for non-prosecution/default. In such Appeal, the Petitioners had assailed an Order dated 1st October 2019 passed by the Deputy Registrar Co-operative Societies, 'D' ward, Mumbai appointing an

administrator under Section 77(A) of The Maharashtra Co-operative Societies Act, 1960 (for short 'the MCS Act'). Mr. Pandit, has several contentions against such Order passed by the Deputy Registrar under Section 77(A) of the MCS Act.

4. At the outset, Mr.Pandit, submits that there is not a single ground as set out in the impugned order, which would justify the appointment of an administrator as per the provisions of Section 77(A) of the Maharashtra Co-operative Societies Act, 1960. His submission is that the instances of purported grievances as set out in the impugned Order, show that there is a private dispute between the society and Respondent Nos.5 and 6 on which, proceedings are pending before appropriate forums. His submission is that considering the specific clauses of the said statutory provisions no ground whatsoever has been made out to appoint an administrator when only under such clauses appointment of an administrator can be made by following a procedure in law.

5. Mr.Pandit would submit that the order appointing authorised officer was challenged by the petitioners by filing an appeal before the Divisional Joint Registrar at Mumbai who vide detailed order dated 14 November 2019 while admitting the appeal had directed the parties to maintain status-quo. Accordingly, the said order continued to operate. It is pointed out that in the

meantime, after commencement of pandemic, on some occasions the appeal was listed before the Divisional Joint Registrar, however, the Divisional Joint Registrar, without prior notice to the petitioners of the listing of the appeal, by an order dated 28 June, 2021 dismissed the appeal for non-prosecution. The said order is required to be noted which reads thus:-

“ORDER

1. The Appeal No. 276 of 2019 is hereby dismissed for non-pursuance and default.
2. No order as to costs.”

6. As the appeal was dismissed, it appears that the Respondent No.7 who was appointed as an administrator was activated with a lightening speed to take charge of the records and the office of the society. He, accordingly, approached the office of the society on 7 August, 2021 and informed the members of the managing committee that as the appeal was dismissed he would come back on 9 August, 2021 to take charge of the records of the Society. Only at such time, the petitioners became aware of the dismissal of appeal for non-prosecution and as a consequence of which the status quo order dated 14th November, 2019 passed by the appellate authority had stood vacated. The Petitioners immediately on 9 August, 2021 moved the appellate authority by filing an application for restoration, setting out the details the circumstances the appeal was dismissed for non-prosecution. However, no orders were passed on such application. In the meantime, the administrator

started taking coercive steps. The petitioners, in such situation, also approached the Hon'ble Minister by filing a revision application. However, the petitioners again could not succeed in their attempt to pursue the said authority, so as to obtain an order to restore the status quo, which was granted by the appellate authority on 14th November 2019.

7. In the aforesaid situation, with no other alternative, the petitioners have approached this Court by the present proceedings. Today the immediate concern of the petitioners as urged by Mr. Pandit is that the administrator on a patently illegal order passed under section 77(A) of the MCS Act has taken over the affairs of the petitioners' society, as also he has freezed the accounts of the society. Mr. Pandit would submit that it was writ large that respondent No.7-Administrator has been appointed by the Deputy Registrar at the behest of respondent Nos.5 and 6 who have disputes against the society and have their own axe to grind, in respect of which proceedings are pending not only before the Cooperative Court but also other Cooperative authorities. It his submission that when such proceedings were pending between the member of the society and the society such a situation would not warrant appointment of an authorised officer under any of the clauses of Section 77(A) of the MCS Act.

8. Having perused the orders dated 1st October 2019 passed by the

Deputy Registrar under Section 77(A), which is subject matter of a challenge in the appeal filed before the Divisional Joint Registrar, prima facie there appears to be a substance in the contentions as urged by Mr. Pandit as to whether there are any grounds which would justify any action under section 77(A) of the MCS Act. Be that as it may, I would not comment on this any further as it is subject matter of the proceeding of an appeal before the appellate authority.

9. However in the present facts in my opinion, action on the part of the respondent no.7 to take charge of the affairs of the society appears to be a patently hasty action, more particularly, when it was to his knowledge that the restoration application itself was presented and the same would be taken up by the appellate authority. In my opinion, in the present facts as also considering the pandemic situation, it was inappropriate and arbitrary on the part of the respondent No. 7 to act with such lightening speed when admittedly there was to be serious prejudice which would be caused to the democratic functioning of the society. Further it was also not appropriate for the appellate authority to dismiss the petitioner's appeal for non-prosecution, more particularly considering that all the petitioners were senior citizens aged between 77 to 62 years, and who were definitely likely to be affected by the pandemic. In these circumstances, it is appropriate that appeal of the

petitioners is restored to file of the appellate authority as also the status-quo ante restored. At this stage, learned counsel for respondent nos. 5 and 6 as well as also learned AGP for the State would submit that, it would be in the fitness of the things that the appeal itself be directed to be decided by the Divisional Joint Registrar at an early date. In my opinion, the suggestion as made by learned counsel for the parties needs to be accepted. Mr. Pandit also agrees that the appeal is required to be heard and decided finally. In the aforesaid circumstances, the petition itself can be disposed of by setting aside the order dated 28th June 2021 passed by the appellate authority Divisional Joint Registrar dismissing the appeal for want of prosecution. The appeal is being restored to the file of Divisional Joint Registrar, Co-op. Societies, Mumbai Division, Mumbai, to be decided as expeditiously as possible, preferably within a period of six months. The Writ Petition is disposed of by the following order:-

ORDER

- (i) The impugned order dated 28 June 2021 passed by the Divisional Joint Registrar dismissing the petitioners appeal for non-prosecution stands set aside. The appeal is restored to the file of Divisional Joint Registrar, Co-op. Societies, Mumbai Division, Mumbai, who shall decide the same as expeditiously as possible, preferably within a period of six months.
- (ii) Till the final disposal of the appeal, status-quo ante is restored, to the effect that the interim order of status quo dated 14 November,

2019 passed by the Appellate Authority shall continue to operate till final disposal of the appeal by the Divisional Joint Registrar.

- (iii) The respondent no.7 is accordingly directed to hand over the charge of the affairs of the society to the in-charge Managing Committee on or before 10 September, 2021 at 11.00 a.m.
- (iv) In the event the bank account of the Society has remained to be frozen, it be defrosted forthwith.
- (v) In the event the Divisional Joint Registrar decides the appeal against the petitioners, the Administrator shall not take any coercive action against the petitioners for a period of two weeks from the date of communication of the order.
- (vi) The petition is disposed of in the aforesaid terms.
- (vii) No costs.
- (viii) As the petition is disposed of, pending Interim Application no. 2206 of 2021 does not survive. It is disposed of.

(G. S. KULKARNI, J.)

corrected as per speaking to minutes order dated 30.09.2021.