

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13248 OF 2021

Shri. Prabhakar Gajendra Wadje & Others ... Petitioners

Versus

The State of Maharashtra & Others. ... Respondents

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Smt. Pradnya Talekar h/f Talekar & Associates, Advocate for the
Petitioners

Mr. Y. G. Gujrathi, AGP for Respondent Nos.1 to 4

Mr. S. V. Deshmukh, Advocate for Respondent Nos.5 & 6

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JULY, 2022

PER COURT :

1. This petition filed under Article 226 & 227 of the Constitution of India takes exception to the order dated 24-05-2021, passed by the Additional Registrar, Co-operative Societies, (Fishery) Maharashtra State, Mumbai/respondent no.2 in Revision Application No.31/2016.

2. It is the case of the petitioners that they were granted membership of the respondent no.6/society in the year 2009. In the year 2013, the Committee of the respondent no.6/society was superseded as per Section 78 (1) of the Maharashtra Co-operative Societies Act, 1960 (for short 'the said Act') and Administrator was appointed.

3. By order dated 01-04-2016 passed under Section 25-A of the said Act, the respondent no.4 directed removal of the names of the petitioners from membership register as well as I & J register of respondent no.6/society. The petitioners challenged this order by filing appeal under Section 152 of the said Act, before respondent no.3. The respondent no.5 intervened in the said appeal and opposed the proceedings on the ground of maintainability of the appeal. He claimed that the order under Section 25-A is passed at his instance. After hearing the parties, respondent no.3 allowed the appeal and set aside the order passed by respondent no.4.

4. The respondent no.5 challenged the order of respondent no.3 by filing revision under Section 154 of the said Act before the respondent no.2. The revision is allowed and the order passed in favour of petitioners by respondent no.3 is set aside. Hence, the present petition.

5. Heard the learned Advocate for the petitioners, the learned Assistant Government Pleader for respondent nos.1 to 4 and the learned Advocate for respondent nos.5 to 6.

6. The learned Advocate for the petitioners assailed the impugned order contending that it is true that, remedy of appeal is not available for challenging the order passed under Section 25-A of the said Act and revision is maintainable. However, the respondent

no.3 had revisional powers, which can be said to be exercised by him. By relying on **N. Mani Vs. Sangeetha Theatre and Others** reported in **(2004) 12 SCC 278**, she submits that merely because wrong provision of law is mentioned that by itself would not vitiate the order passed by respondent no.3. She submits that if it is to be assumed that the respondent no.3 had exercised powers under Section 154 of the said Act, then the revision filed before the respondent no.2 was not maintainable being second revision in view of the Full Bench decision in **Shireen Sami Gadiali and Another Vs. Spenta Co-op. Hsg. Sco. Ltd. & Others** reported in **2011 (3) Mh.L.J. 486**.

She further submits that removal of membership under Section 25-A of the said Act can be only on two circumstances, either on cessation of membership or on disqualification. Both these conditions are absent in this matter, hence the petitioners could not have been removed as members.

7. By relying on the documents placed on record by the petitioners i.e. membership application, share certificates and receipts of membership fees etc., she submits that the petitioners were conferred membership by following prescribed procedure and the respondent no.4 erred in directing removal of the petitioners' names from the membership register as well as I & J register.

8. The learned Advocate for respondent nos.5 & 6 strenuously opposed the petition contending that the documents relied on by the petitioners, in support of their membership, are not at all available on the record of respondent no.6/society. He further submits that the Secretary, who has signed the documents of the petitioners was not validly appointed. The Chairman who has signed documents of the petitioners along with the Secretary has categorically stated in a proceedings filed by him in the year 2011, that there were only 32 members of the respondent no.6/society. He therefore submits that the documents which are relied on by the petitioners are all fabricated documents and they cannot be considered in support of the claim of the petitioners that they are members of respondent no.6/society. He therefore submits that the petition be dismissed.

9. The learned Assistant Government Pleader supports the impugned order.

10. Indisputably, the order passed under Section 25-A of the said Act cannot be challenged in appeal under Section 152 of the said Act, but it can be challenged in the revision under Section 154 of the said Act. In the impugned order, respondent no.2 has also observed that the respondent no.3 could not have exercised powers under Section 152 of the said Act and he ought to have exercised powers under Section 154 of the said Act.

11. In N. Mani (Supra), the Apex Court has held:

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

12. In view of the above ratio, since respondent no.3 had power under Section 154 of the said Act, the order passed by him cannot be said to be vitiated, merely because a wrong provision is mentioned. If it is to be considered that the respondent no.3 has exercised power under Section 154 of the said Act, then revision at the instance of respondent no.5 cannot be said to be maintainable in view of the Full Bench decision in Shireen Sami Gadiali and Anr. (Supra).

13. Respondent no.4 while passing the impugned order has failed to consider the aspect that the respondent no.4 was the Administrator of respondent no.6/society and the respondent no.4 has passed the order under Section 25-A of the said Act in the capacity of Assistant Registrar, Co-operative Societies (Dairy), Osmanabad and directed himself, he being the Administrator of respondent no.6/society to remove the names of the petitioners from the membership register as well as I & J register.

14. The learned Advocate for the petitioners was right in submitting that Section 25-A of the said Act contemplates removal of names of members from membership register in two eventualities, when a person has ceased to be a member and a person stands disqualified by or under the provisions of the said Act.

15. There are several disputed question of fact involved in the present petition. The membership of the petitioners is disputed, so also genuineness of documents relied upon by the petitioners. The respondents are also disputing the validity of the appointment of Secretary, who has signed the documents relied upon by the petitioners.

16. This Court in extraordinary writ jurisdiction is not inclined to entertain the disputed question of fact. The learned Advocate for the petitioners and the respondents inform that the elections were held and the new Managing Committee has taken over the charge from the Administrator

In the peculiar facts of the present case, this Court is of the view that it would be appropriate to relegate the matter back to the respondent no.3 to consider the issue of removal of the petitioners from the membership of respondent no.6/society after hearing them on merit and after considering the record of the respondent no.6/society.

17. In the result, the following order:

ORDER

(a) The writ petition is allowed in terms of prayer clause 'A'.

(b) The impugned order dated 24-05-2021 passed by respondent no.2 and the order dated 28-06-2016 passed by respondent no.3 are hereby quashed and set aside.

(c) The matter is remanded back to respondent no.3, who shall treat the matter filed by the petitioners as revision under Section 154 of the said Act and decide it on merits, in accordance with law, within a period of four weeks from the date of receipt of this writ.

(d) The parties are directed to appear before the respondent no.3 on 27-07-2022. Notice in that behalf is therefore waived.

[NITIN B. SURYAWANSHI, J.]

Sameer