

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1098 OF 2022

Dinkar Desai .. Petitioner

Versus

The State of Maharashtra through

Dept. of Co-Op. & Ors. .. Respondents

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Mr.Pradeep Thorat i/b Ms.Aditi S. Naikare for the Petitioner.

Mr.Vijaykumar Aggarwal for the Respondent No.3.

Mrs.V.S.Nimbalkar, AGP for the State.

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CORAM: RAVINDRA V. GHUGE, J.

DATED : 04th FEBRUARY, 2022

P.C:-

1. The petitioner, Dinakar Appa Desai, is aggrieved by the order dated 21/12/2021, passed by the Joint Registrar, Co-Operative Societies, CIDCO, Navi Mumbai vide which his application for seeking intervention in an enquiry under Section 78A of the Maharashtra Co-Operative Societies Act, 1960 has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and have gone through the grounds (a) to (q) formulated in the memo of the petition.

3. Section 78A reads as under :-

“78A. Power of supersession of committee or removal of member thereof

(1) If in the opinion of the Registrar, the committee or any member of such committee has committed any act, which is prejudicial to the interest of the society or its members or if the State Co-operative Election authority has failed to conduct the elections in accordance with the provisions of this Act or where situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has, or is likely to, come to a stand-still, or if serious financial irregularities or frauds have been identified or if there are judicial directives to this effect or, if there is a perpetual lack of quorum or, where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such committee stands disqualified by or under this Act for being a member of the committee, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections in writing as provided under sub-section (1) of section 78 and after giving a reasonable opportunity of being heard, and after consultation with the federal society to which the society is affiliated comes to a conclusion that the charges mentioned in the notice are proved, and the administration of the society cannot be carried out in accordance with the provisions of this Act, rules and bye-laws, he may by order stating reasons therefor,

(a) (i) supersede the committee; and

(ii) appoint a committee consisting of three or more members of the society otherwise than the members of the committee so superseded, in its place, or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society for a period not exceeding six months:

Provided that, the Registrar shall have the power to change the committee or any member thereof or administrator or administrators appointed at his discretion even before the expiry of the period specified in the order made under this sub-section:

Provided further that, such federal society shall

communicate its opinion to the Registrar within forty-five days, from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the order of supersession or removal of a member and the Registrar shall be at liberty to proceed further to take action accordingly:

Provided also that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply and the committee shall not be superseded for a period exceeding one year:

Provided also that, nothing in this sub-section shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government;

(b) remove the member:

Provided that, the member who has been so removed shall not be eligible to be re-elected, re-co-opted or re-nominated as member of any committee of any society till the expiry of period of next one term of the committee from the date on which he has been so removed:

Provided further that, in case of society carrying on the business of banking, that provisions of the Banking Regulation Act, 1949, shall also apply.

(2) The Provisions of sub-sections (3), (4), (5), and (6) of section 78 shall apply *mutatis mutandis*, in relation to supersession or removal under this section.”

4. It calls for no debate that, a show cause notice issued under Section 78A, does not deal with any particular individual whose name may crop-up in such enquiry. It deals with the affairs of the society, as is evident from the reproduced Section hereinabove.

5. The grievance of the petitioner is that his name crops up in clause 5 of a show cause notice dated 12/03/2021 issued by the Joint Registrar, Co-Operative Societies, CIDCO. The apprehension of the petitioner is that there is a likelihood of a decision with regard to he allegedly being a defaulter. Considering the scheme of law, the apprehension of the petitioner is wholly misconceived and misplaced. He is not a necessary party to the proceedings under Section 78 A.

6. This petition, being devoid of merits, is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)