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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7173 OF 2022

WITH

WRIT PETITION NO.7174 OF 2022

Uma Vadecha

... Petitioner.

V/s

State of Maharashtra and Others

.... Respondents.

Mr. Krishna K. Holambe Patil for the Petitioner in both the Writ Petitions.

Mr. Amogh Singh a/w Mr. Jeet Singh i/b D.P. Singh for Respondent Nos. 5 to 8 in both the above Writ Petitions.

Mr. P.P. Pujari AGP for Respondent Nos. 1 to 3 in Writ Petition No.7173 of 2022.

Mr. C.D. Mali, AGP for Respondent Nos. 1 to 3 in Writ Petition No.7174 of 2022.

CORAM: NITIN W. SAMBRE, J.

DATE: JUNE 30, 2022

P.C.:-

1] Both these Petitions are pertaining to very same Respondent

No.4-Society questioning the order of disqualification of the Respondents-members under Section 78A(1)(b), thereby disqualifying Respondents members for period of five years to be the members of the Managing Committee of the Co-operative Housing Society and directing their removal from such Committee and further consequential order in exercise of powers under Section 77(A)(1) (b-1), appointing Administrative Committee.

2] Contentions of the Counsel for the Petitioners are, the order of appointment of Administrator is a sequel of removal of the Respondents-members from the post of members of the Executive Committee of the Respondent-Society. According to him, though elections were due, as the tenure of Respondents-members, as members of the Managing Committee of the Society, has come to an end, the order impugned came to be passed. He would further point out that the orders of District Deputy Registrar were justified in a given situation and there was eminent situation created because of conduct of the Respondents-members which prompted the District Deputy Registrar to exercise aforesaid powers under Section

78A(1)(b). He would further urge that election programme is already declared under the aegis of Administrative Committee appointed vide order of the District Deputy Registrar and the elections are being held. According to him, today is the last date of nomination and that being so the authorities below i.e. Divisional Joint Registrar so also the State Government committed an error in upsetting the order of District Deputy Registrar. He would further urge that even if it is presumed that provisions of Section 78A of the Act which provide for consultation with the federal society in the matter of initiation of action under Section 78A(1)(b) of the Act, such provisions are not mandatory. He would invite attention of this Court to the communication issued by the District Deputy Registrar calling for such consultation and opinion of federal society and since the federal society did not respond to the same, District Deputy Registrar was left with no other option but to pass the order of removal of the Respondents-members as members of the Executive Committee of the Society and their disqualification having regard to their conduct reflected in the order impugned. He would further invite attention of this Court to the very conduct of the Respondents-members which

according to him has rightly prompted the authorities to pass the orders impugned.

3] Mr. Singh, learned Counsel for Respondent Nos. 5 to 8 and learned AGPs would support the orders impugned. According to them, this Court in the matter of *Hemchandra Madhukar Shaligram & Ors. Vs. Sonal Sanjeeva Shetty & Ors.* reported in **2019(6) ABR 138** relying on the judgment of the Apex Court held that consultation provided under the said provision is mandatory. According to them, merely because District Deputy Registrar has issued communication to the federal society communicating his intention to take action under Section 78A(1)(b) by itself will not amount to effective consultation. As such, according to them, the orders impugned are sustainable in law.

4] I have appreciated the aforesaid submissions.

5] Fact remains that Section 78A of the Act provides for consultation with the federal society in the matter of action to be

taken against the sitting members of the Executive Committee of the Co-operative Society pursuant to the provisions of Section 78A(1)(b) of the Act. Merely because District Deputy Registrar has issued communication that by itself will not make the consultation provided under Section 78A effective. There has to be response either positive or negative from the said federal society which is absent in the case in hand. Apart from above, I am informed that District Deputy Registrar has not issued order calling for any say of the federal society on the aforesaid issue by forwarding or making entire record available to federal society, which he has relied on for passing the order impugned. As a sequel of above, Divisional Joint Registrar so also the State Government, in my opinion, were justified in setting aside the order impugned.

6] That being so, no case for interference in extraordinary jurisdiction is made out. Petition as such fails and same stands dismissed. Parties are in agreement that tenure of the Executive Committee of the Respondent-Co-operative Housing Society has come to an end more than a year back. As a sequel, Administrative

Committee came to be appointed, which has declared the election of the Respondent-Co-operative Housing Society.

7] The the fact that election programme is already declared by the Administrative Committee appointed by the order District Deputy Registrar has travelled at an advance stage i.e. today is the date to filing nomination forms, this Court thinks it fit to continue the said Administrative Committee only for the purpose of holding elections. Any expenses of such election has to be with prior approval of the District Deputy Registrar. Needless to clarify that this Court has not gone into as to whether the said election declared by the Administrative Committee is legal or not as same can be gone into in appropriate proceedings.

8] Needless to clarify that if Respondent-members against whom order under Section 78A(1)(b) of the Act was passed which is set aside by this Court, submit their nomination forms same be not rejected by the Returning Officer. Any other objection to the nomination of Respondents-members be decided by the Returning

Officer in accordance with law.

9] Copy of the present order is directed to be made available to the District Deputy Registrar by learned AGP for taking appropriate steps and issuing instructions to the Administrative Committee to that effect.

(NITIN W. SAMBRE, J.)