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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7442 OF 2022

Jayprakash Sahakari Griha Rachana Sanstha Mrt] .. Petitioner

vs.

The State of Maharashtra & Ors.] .. Respondents

Mr.Valmiky H. Narvekar i/b Mr. Aadesh M. Patil, for Petitioner.

Mr.A.I. Patel, Addl. G.P. a/w Mrs.M.S.Bane, AGP for Respondent Nos.1 to 3.

Mr.Prashant Darandale for Respondent no.4.

Mr.Prasad P. Kulkarni, for Respondent No.5.

**CORAM : R.D. DHANUKA &
M.G.SEWLIKAR, JJ.**

DATE : 4TH JULY, 2022.

JUDGMENT : (PER : M.G.SEWLIKAR, J)

1] Rule. Respondents waive service of notice. Rule is made returnable forthwith. With the consent of the parties taken up for final hearing at the stage of admission.

2] The facts leading to this Petition can be succinctly stated thus :

The Petitioner is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 ("MCS Act" for short). On

26th July, 2015 elections of the Managing Committee of the Petitioner-Society were held for the period from 2015-2020. Accordingly, the present Committee assumed office on 16th August, 2015. It was obligatory on the Petitioner-Society to hold elections for the years 2020-2025. However, because of unprecedented and unforeseen circumstances created due to pandemic Covid-19, the elections of the Petitioner-Society could not be held. Owing to the pandemic, the Government of Maharashtra postponed all the elections in the State of Maharashtra. Upon Notification dated 20th July, 2020, the Government of Maharashtra extended the tenure of the committees of all types of societies to enable the existing members of the committees of the Co-operative Societies to continue in office until the next committees are duly constituted.

3] On 5th October, 2021 the State Co-operative Election Authority vide its order notified names of Election Officers for conducting the managing committee elections of housing societies. Respondent No.4 made a complaint and an enquiry was instituted. Inquiry Officer (Respondent No.3) accordingly submitted the report.

4] On 27th March, 2022, the Petitioner-Society appointed Respondent No.5 as an Election Officer. On 13th May, 2022, Election Officer sought

some information i.e. list of members, list of defaulters from the Petitioner-Society. On 19th May, 2022, Notice of agenda was issued for holding Committee meeting on 27th May, 2022. This notice was issued to conduct regular business and to consider the issue of calling amounts due from the members towards maintenance. Respondent No.2 at the behest of Respondent No.4 issued notice under Section 77(A)(1-b) of the MCS Act on 23rd May, 2022 to show cause as to why Administrator shall not be appointed on Society. This notice was served on 27th May, 2022.

5] In the meeting dated 27th May, 2022, election programme for the year 2022-2027 was declared and members were called upon to clear off the maintenance charges due from them.

6] On perusal of the show cause notice, the Petitioner learned that the notice was issued on the basis of inquiry report dated 22nd April, 2022 submitted by Respondent No.3-Inquiry Officer. The Petitioner has challenged the show cause notice in this Petition and sought writ of mandamus directing Respondent No.3 to withdraw the show cause notice dated 23rd May, 2022. Hence, this Petition.

7] Heard Mr.Narvekar, learned counsel for the Petitioner, Mr.A.I. Patel, Addl. GP for the State, Mr.Prashant Darandale, learned counsel for Respondent No.4 and Mr.Prasad Kulkarni, learned counsel for Respondent No.5.

8] The learned counsel for the Petitioner submitted that the Petitioner was served with the show cause notice on the basis of report submitted by Respondent No.3 -Mr. Vijaysinh Malwadkar who was appointed as Enquiry Officer by Respondent No.2-Deputy Registrar, Co-operative Societies. He submitted that Respondent No.2 did not provide copy of the enquiry report. The Petitioner had to make an application to Respondent No.2 for getting a copy of the enquiry report. He further submitted that in terms of Section 77AAA of the MCS Act, the term of elected members of the committee was extended till the constitution of new committee. He submitted that when the term of the committee was over, election could not be held on account of pandemic Covid 19 and on account of Government Resolutions by virtue of which term of the extant committee was extended till the constitution of new committee. Respondent No.4 is not a member of the society and therefore he has no locus to raise any objection for not holding the elections.

9] The learned counsel for Respondent No.4 submitted that there is complete mismanagement in the society. The existing committee has not held elections and now the existing committee is going to hold elections. Considering the mismanagement, Respondent No.2 issued show cause notice for appointment of Administrator. He admitted that he is not a member of the society. His father was member of the society. After his demise, Respondent No.4 has not been enrolled as a member of the society. He submitted that Respondent No.4 is whistle-blower. Therefore, it would not be in the fitness of things to withdraw the show cause notice.

10] We have given anxious consideration to the submissions of learned counsel on both the sides.

11] It is an admitted position that because of the pandemic out-break lockdown was imposed on account of which entire affairs of society had come to standstill. To overcome this situation, the legislature of the State inserted proviso to Section 73AAA authorizing the existing members of the committee to continue till new committee is duly constituted.

12] Section 73AAA reads thus :

73AAA. Constitution of Committee

(1)

(2)

(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee [and on the expiry of the term of the committee, the members shall be deemed to have vacated their offices as members of the committee].

Provided that, if the term of office of the elected members of the committee and its office bearers has expired, and if the election to the committee of the society could not be held due to imposition of lockdown in the State in view of the Covid-19 pandemic, the orders issued by the Government, from time to time, or any reason not attributable to the members of the committee of the society, such members and office bearers of the committee shall be deemed to have continued as members and office bearers of the committee till new committee is duly constituted.

Provided further that, if the election to the Committee of the society could not be held for any reason not attributable to the members of the Committee of such Society, the existing members of the Committee shall be deemed to have continued till new committee is duly constituted.

13] These two provisos clearly indicate that if elections are not held due to imposition of lockdown or for any other reason not attributable to the members of the committee of the society, the term of the committee shall be deemed to be continued till new committee is constituted.

14] Section 73 AAA authorises the Societies to postpone the elections on account of unforeseen circumstances. Admittedly, the entire world was reeling under pandemic Covid 19. It started in the year 2020. Since March,

2020, lock-down was imposed. Considering the unprecedented circumstances created due to the pandemic, the Government by passing resolutions extended the term of the committees of various co-operative societies till reconstitution of the new committees. Therefore, the existing committee cannot be said to be at fault for not holding elections in view of the Government Resolutions passed to meet the challenges posed by the pandemic after the out break of the pandemic. The society has now decided to hold elections. Respondent No.4 raised objection vide letter dated 23rd June, 2022 addressed to Respondent No.5-Election Officer who prepared draft voters list. While answering the objection of Respondent No.4, Respondent No.5 found that Respondent No.4 is not a member of the society and on account of that his name was not included in the voters list. This clearly shows that Respondent No.4 is not a member of the society. Despite that he is raising all kinds of objections and creating obstacles in holding the elections. Therefore, the objections raised by the Petitioner cannot be considered as Respondent No.4 is not a member of the society. Therefore, it would be in the fitness of things to direct Respondent No.2 to withdraw the show cause notice.

15] We, therefore, deem it fit to allow the Writ Petition. In view of this following order is passed :

- a] Writ Petition is allowed in terms of prayer clause (a). Rule is made absolute accordingly.
- b] No order as to costs.

[M.G.SEWLIKAR, J]

[R.D.DHANUKA, J]