

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8306 OF 2022
WITH
INTERIM APPLICATION NO. 17822 OF 2022**

John Chacko and Ors.

....Petitioners

V/s.

The Asstt. Registrar Co-op

Societies and anr.

....Respondents

Mr. N.N. Bhadrashete a/w. Ms. Priyanka B., Advocate for the petitioners.

Mr. S.M. Gorwadkar, Senior Advocate i/by. Mr. Kirit Hakani a/w. Ms. Niyati Mankad, Advocate for the Intervenor in IA-17822-2022.

Smt. Vaishali S. Nimbalkar, AGP for State-respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

THURSDAY, 29TH SEPTEMBER, 2022.

P.C. :

1. Heard Mr. Badrashete, learned Counsel for the petitioners, Ms. Nimbalkar, for the State and Mr. S.N.

Gorwadkar, learned Counsel for the Intervenor (complainant).

2. This petition under Article 227 of the Constitution of India, takes exception to the order dated 31st December, 2022 passed under Section 77A of the Maharashtra Co-operative Societies Act, by which Mr. Kakde (respondent no.2) came to be appointed as Authorised Officer, to manage affairs of the Society, till a new Committee enters upon Office. Apparently, the said order has been passed on an application of Mr. Anup Dhankumar Doshi and other members-complainants; but without notice to the petitioners, who were then the members of the Managing Committee of the respondent-Society. Mr. Gorwadkar, learned Counsel for the intervenors, submitted that, the Registrar is empowered to exercise the powers under Section 77A, either suo-moto, or on the application of any Officer or Member of the Society and therefore notice to Committee members, is neither contemplated, nor mandatory. Correct to say that, Registrar is empowered to exercise powers under Section 77A suo-moto or on the application of any Officer or Member of the Society, Yet, before exercising such power

Registrar is statutorily required to publish the notice on the notice board at the Head Office of the Society, inviting objections and suggestions, with respect to the proposed order appointing a Committee or any Member or Authorised Officer to manage the affairs of the Society till the new Committee enters upon Office. No doubt, the second proviso enables the Registrar to dispense with the obligation of publishing notice, provided he is satisfied that immediate action is required to be taken, or it is not practical to publish such notice. Therefore, before taking recourse to second proviso, the Registrar is required to record satisfaction, as to the circumstances in which, it was not reasonably practical to publish such notice. Admittedly, neither such satisfaction has been recorded, nor petitioners were heard before passing the impugned order. Thus, to be held that the impugned order has been passed in breach of the principles of natural justice. For this reason, the order impugned is set aside.

3. In any case, the tenure, of the then Managing Committee of the Society was over and election of the Society is due. The Registrar, in Affidavit, stated that the Society falls in Category "Type-E" in terms

of the Maharashtra Co-operative Societies (Election to Committee) (Amendment) Rules, 2019 and he shall hold election within three months. If that be so, let the Officer hold the election as per the provisions of the Act and the aforesaid Rules within three months from today.

4. It is clarified, that the petitioners if not otherwise disqualified, shall be eligible to contest the election of the Society.

5. At the same time, complainants' remedy in law, against the acts and/or omissions of the petitioner, committed while managing affairs of the Society, are expressly kept open.

6. The petition is allowed and disposed of in the aforesaid terms.

NEETA
SHAILESH
SAWANT

(SANDEEP K. SHINDE, J.)

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