IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7738 OF 2019

Shri. Surendra B. Tiwari and Ors. ...Petitioners
V/s.
The Joint Registrar Co. Operative Societies (East and West Suburbs) Slum Redevelopment Authority & Ors. ...Respondents

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Mr. Pradeep J. Thorat a/w. Ms. Aditi Naikare, for the Petitioners.
Mr. Dilip Jadeja i/b. Mr. Abhijeet Desai, for the SRA / Respondent No.1.
Mr. Santraj Rampyare, for the Respondent No.3.
Mr. C. D. Mali, AGP for the Respondent No.4 / State.

CORAM : C.V. BHADANG, J.
DATE : 27 SEPTEMBER 2022

Order -

. This petition is taken up for final disposal, by consent of parties.

2. The Petitioners are the officer bearers of Panchasheel SRA Co-operative Housing Society Ltd., which was constituted for purpose of implementing a Slum Rehabilitation Scheme (SRA Scheme) under DCR 33(10) of 1991. The Joint Registrar of Co-Operative Societies (SRA) had issued a show cause notice to the

Petitioners on 5 June 2017, calling upon the Petitioners to show cause as to why the audited accounts of the society for the period from 2010 to 2013 were not submitted to the Competent Authority, as required by the bye-laws of the society as well as provisions of the Maharashtra Co-operative Societies Act and the Rules framed thereunder.

3. The Petitioners who claim to be elected in the year 2015 filed reply to the show cause notice and also produced the audited accounts book of the society for the period from 2010 to 2013. Inspite of this, the Joint Registrar by an order dated 11 September 2017 passed an order under Section 78(A) of the said Act, thereby superseding the Managing Committee and removing the Petitioners as officer bearers of the society. According to the Joint Registrar, the inaction of the Petitioners in submitting the audited account books for the period from 2010 to 2013 was against the interest of the society.

4. The Petitioners sought to challenge the said order in an appeal under Section 152 of the said Act before the State Government. The Hon'ble Minister for State for Cooperation who took up the matter treated it as a revision application under Section 154 of the said Act. The Hon'ble Minister by an order dated 20 June 2019 has rejected the Revision Application No.854/2017 which is subject matter of challenge in this petition.

5. I have heard the learned counsel for the Petitioners and the learned counsel for the Respondent No.3 on whose complaint, the action was taken by the Authorities. Perused record.

6. The learned counsel for the Petitioners submitted that the show cause notice issued and the consequent action taken under Section 78-A of the Act was incompetent in as much as the fourth proviso to Section 78(1) states that the provisions of Section 78(A) would not apply to societies where there is no Government shareholding and loan or financial assistance or a guarantee by the Government. Secondly, it is submitted that there was no 'effective consultation' with the federal society as required by sub-Section 1 of Section 78(A) of the Act. It is submitted that in any event the Petitioners were elected in the year 2015 and therefore any such action could not have been taken for the alleged lapse during the previous period from the year 2010 to 2013. It is submitted that the Petitioners had produced the audited accounts and therefore, no action could have been taken.

7. The learned counsel for the Respondent No.3 submitted that there are several irregularities which were committed by the Petitioners. He points out that the Petitioners were the office bearers of the society from 2010 to 2015 also and therefore cannot escape the responsibility. He therefore submitted that the action is legal and proper.

8. The learned counsel appearing for the Respondent No.4 has supported the impugned order on similar lines.

9. I have considered the submissions made.

10. In so far as the action taken under Section 78-A is concerned, it does appear that by virtue of the fourth proviso, to sub-section 1 of Section 78-A, the said section would apply only when there is a Government aid / financial assistance or guarantee by the Government to the society. However, that by itself may not vitiate the action as there are also powers conferred under Section 78 to take such action. Mere wrong label or mention of the provision is not decisive.

11. The learned counsel for the Petitioners, in all fairness, submitted that sub-section 1 of Section 78, does not require that the society has received any financial assistance / aid etc. He further points out that requirement of 'effective consultation' with the federal society as they are in sub-section 1 of Section 78 also. A specific query was made to the learned counsel for the Petitioners whether said society is affiliated to any federal society. In response, it is not shown that the said society was affiliated to any federal society.

12. However, in my considered view, action under Section 78 of the Act is a drastic action of supersession of the elected

Managing Committee of the society. Thus, such action can be taken for the reasons and the grounds as mentioned in the said section. The basis of the impugned action, in the present case, is the alleged lapse of the Petitioners in submitting the audited accounts of the society for the period from 2010 to 2013.

13. I have gone through the impugned order and there is no finding that the alleged inaction of the Petitioners to submit the audited accounts book for the said period were detrimental to the interest of the society. Even otherwise, the mere non submission of the audited accounts book –particularly when such audited accounts are produced subsequently– without anything more by itself, cannot be said to be detrimental to the interest of the society. I would hasten to add that the question would depend upon facts and circumstances of each case. In the present case, the audited accounts were produced alongwith the reply to the show cause notice. The learned counsel for the Petitioners was at pains to point out that such audited accounts were antecedent to the issuance of the show cause notice. Thus, it is nobody's case that the account books were prepared or were got audited subsequent to the issuance of the show cause notice. In the peculiar facts of the present case, I am unable to accept that any lapse, that too during the tenure of the previous Managing Committee can be said to be detrimental to the interest of the society so as to support a drastic action of supersession of the Petitioners as members of the Managing Committee.

14. The learned counsel for the Petitioners, in all fairness, pointed out, that the tenure of the Managing Committee has come to an end in the year 2020 and an Administrator is appointed. He points out that the elections could not be held only on account of an order of status-quo operating in the present petition. In my considered view, the holding of the election so that the duly elected body can take charge of the society, is a paramount consideration.

15. In such circumstances, the petition is allowed. The impugned orders are hereby set aside. It is further made clear that on account of the fact that the tenure of the Managing Committee has already expired in the year 2020, a fresh election for the Managing Committee shall be conducted by the Competent Authority in accordance with law. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.