

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.2694 OF 2019**

- 1 Gangadhar Manmathappa Swami,  
Age 54 yrs., Occ. Business,  
R/o Ketki Sangameshwar Sahakari Gruha  
Nirman Sanstha, Degloor Road, Udgir,  
Dist. Latur.
- 2 Bhagwat Ganpatrao Sontakke,  
Age 55 yrs., Occ. Agri.,  
R/o Ketki Sangameshwar Sahakari Gruha  
Nirman Sanstha, Degloor Road, Udgir,  
Dist. Latur.
- 3 Laxmibai w/o Nagnath Acharya,  
Age 60 yrs., Occ. Household,  
R/o Ketki Sangameshwar Sahakari Gruha  
Nirman Sanstha, Degloor Road, Udgir,  
Dist. Latur.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,  
Through Principal Secretary,  
Cooperation Department,  
Mantralaya, Mumbai – 32.
- 2 The District Deputy Registrar,  
Co-operative Societies,  
Latur, Dist. Latur.
- 3 The Assistant Registrar,  
Co-operative Societies,  
Udgir, Dist. Latur.
- 4 The State Co-operative Election Authority,

Maharashtra State, Central Building Pune  
Through its Commissioner/Secretary.

- 5 Ketki Sangameshwar Sahakari Gruha Nirman  
Sanstha, Nideban, Tq. Udgir,  
Dist. Latur.  
Through its Liquidator,  
C.M. Dhondage (Co-op. Officer Grade-II)  
Age 45 yrs., Occ. Service,  
Through Office of Assistant Registrar,  
Co-operative Societies, Udgir,  
Dist. Latur.

... **Respondents**

...

Mr. M.S. Deshmukh, Advocate for petitioners  
Mr. A.S. Shinde, AGP for respondent Nos.1 to 3  
Mr. S.K. Kadam, Advocate for respondent No.4  
Mr. P.G. Rodge, Advocate for respondent No.5

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**CORAM : SMT. VIBHA KANKANWADI AND  
Y.G. KHOBRADE, JJ.**

**RESERVED ON : 10<sup>th</sup> NOVEMBER, 2022**

**PRONOUNCED ON : 01<sup>st</sup> MARCH, 2023**

**JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]**

1 The petitioners, who are the original objectors, have invoked the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the impugned order under Section 102(1)

(c) (ii) & (iv) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the M.C.S. Act”) issued by Assistant Registrar, Co-operative Societies, Udgir, Dist. Latur on 15.01.2019.

2            Heard learned Advocate Mr. M.S. Deshmukh for petitioners, learned AGP Mr. A.S. Shinde for respondent Nos.1 to 3, learned Advocate Mr. S.K. Kadam for respondent No.4 and learned Advocate Mr. P.G. Rodge for respondent No.5.

3            The factual matrix leading to the petition are that petitioners and other 16 persons are the members of one society viz. Ketki Sangameshwar Sahakari Gruha Nirman Sanstha, Nideban, which is registered under the Co-operative Societies Act and has been classified as ‘Housing Society’. The certificate of registration was issued on 31.07.1989. The said society i.e. respondent No.5 has immovable property bearing Sy. Nos.16 and 16/B, which is divided into total 16 plots, out of which plot Nos.14, 15 and 16 were kept as reserved. The purpose of reservation was for the enjoyment of public amenities to the members. In respect of some of the plots, lay out was fallen to assessment by the Village Panchayat, Nideban and the details thereof are given. The petitioners have purchased their respective plots from the original members of the said society and have constructed their houses over the said

plots. The petitioners and other 16 members had filed Dispute No.321/2015 before learned Co-operative Court, Latur and by order dated 08.09.2017 the respondent Nos.1 and 2 herein were permanently restrained from transferring plots of the society to any non members. By the said Judgment and order plot Nos.15 and 16 were declared as reserved plots of the society. The observations were made that respondent No.2 i.e. the Chairman has illegally allotted certain plots to the daughters when the bye-laws of the society permit allotment of one plot to any member or his family. The petitioners have given as to how Chairman of the society Mr. Kashinath Trimbakappa Jirge has not maintained the accounts and had not got the accounts audited, so also did not take steps for the elections to the Managing Committee. Various complaints were also filed, however, no updated audit reports and requisite documents were submitted under Section 79 of the M.C.S. Act. As the elections were not held the respondent No.3 by exercising his powers under Section 77-A(b-1) of the M.C.S. Act appointed one Mr. R.B. Katala as an Authorized Officer to make an inquiry. Said Mr. Jirge had submitted an application on 07.12.2015 for deregistration of the society. Inquiry was held and the application filed by Mr. Jirge came to be rejected. In fact, respondent No.3 in his capacity as Authorized Officer was expected to hand over the Record and Proceedings of the society, however, it was his say that Mr. Jirge had not handed over any Record and Proceedings to him in

spite of demand. Notice was issued on 18.04.2016 and thereby general meeting of the members of the society was called on 08.05.2016. In all 25 members remained present, who unanimously demanded not to deregister the society and demanded elections to be held. Thereafter, the petitioners and other 16 members submitted an application on 17.04.2017 to respondent No.4 and requested him to hold the election of the society under Rule 75 of Maharashtra Co-operative (Election to Committee) Rules, 2014. Respondent No.3 had directed the society to deposit the election fund as well as list of voters in accordance with the Election Rules within eight days. It was also informed that failure to supply of those things would result into action under Section 77-A of the M.C.S. Act. Petitioners had prayed for directions to be given to Taluka Co-operative Election Officer to commence the election procedure. Even the representation was also made by the petitioner No.2 to respondent No.2 to implement the order dated 29.05.2017 and 22.09.2017. Respondent No.2 in his capacity as District Co-operative Election Officer by his order dated 24.09.2018 directed the respondent No.3 to immediately take up the steps. However, by letter dated 09.10.2018 respondent No.3 submitted his explanation for failure to implement orders of respondent No.4. In the meanwhile, in exercise of powers under Section 77-A of the M.C.S. Act again appointed Mr. Katala as Authorized Officer for the society, by order dated 03.02.2018. That order was challenged by Mr. Jirge bearing

Appeal No.22/2018. That appeal was dismissed by Joint Registrar, Co-operative Societies, Latur Division, Latur on 27.08.2018 by giving directions to respondent No.3 to complete the election process. However, again by the said explanation dated 17.10.2018 Mr. Katale pointed out that in spite of repeated contacts with the Chairman Mr. K.T. Jirge he has not handed over the necessary documents to him, so that he can prepare list of voters and, therefore, he ultimately requested to appoint Liquidator under Section 102 of the M.C.S. Act. Respondent No.3 by interim order appointed respondent No.5 as Liquidator. The petitioners and others had filed detailed explanation and raised objection for the appointment of Liquidator. They also prayed that the interim order of appointment of Liquidator should be cancelled. In fact, the report dated 17.10.2018 that was submitted by Mr. Katale is in fact not a report at all. No opportunity, much less the principles of natural justice have been adhered to before passing the impugned order regarding appointment of Liquidator. The impugned order is contrary to the object and spirit of the scheme contemplated under Section 102 of the M.C.S. Act. As the fair opportunity has been denied, Writ of Mandamus or any other appropriate Writ is deserves to be issued for giving directions. The petitioners are seeking following prayers :

- A) Issue writ of certiorari and or any other appropriate writ or

order in the like nature thereby quashed and set aside impugned order passed by respondent No.3 – Assistant Registrar, Co-operative Societies, Udgir dated 15.01.2019 (Exhibit - S).

B) Issue Writ of Mandamus and/or and other appropriate Writ or Order in the like nature, thereby direct the respondent nos.3 and 4 to hold Election to Managing Committee of respondent no.5 – Housing Society pursuant to orders of respondent no.4 – State Co-operative Election Authority, Maharashtra State, Pune dated 29.05.2017 and 22.09.2017.

C) Grant stay to the effect, operation and implementation of impugned order passed by respondent No.3 – Assistant Registrar, Co-operative Societies, Udgir dated 15.01.2019 (Exhibit - S), pending hearing and final disposal of the instant petition.

D) Issue an order of injunction thereby restrained respondent No.5 – Liquidator from taking any further steps on the basis of impugned order passed by respondent No.3 – Assistant Registrar, Co-operative Societies, Udgir dated 15.01.2019 (Exhibit - S).

4 Affidavit-in-reply has been given on behalf of respondent Nos.1 to 3 by one Shrikant Laxman Pawar, working as Assistant Registrar, Co-operative Societies, Udgir. It has been submitted that the writ petition deserves to be rejected on the ground of availability of alternative and efficacious remedy to the petitioner under Section 104 of the M.C.S. Act before the State Government. There is total suppression of fact by the petitioner and, therefore, on that count also the petition deserves to be

rejected. Said Mr. Jirge, who was the Ex-Chairman of the society, had requested for cancellation of registration. His prayer was turned down. However, the Authorized Officer was appointed to conduct the election. Even respondent No.2 had directed respondent No.3 to take steps for conduct of election of society. The Divisional Joint Registrar had directed Assistant Registrar to complete the election of the society within a period of six months. It could not be done and therefore, report was filed ultimately on 17.10.2018. In fact, Authorized Officer had issued notices to the interested parties including the petitioner for hearing. In spite of service of notice the petitioner and other interested persons failed to appear and, therefore, the Liquidator came to be appointed. There is no illegality or error in that.

5 Further clarificatory additional affidavit-in-reply has been filed by the same person in view of order passed by this Court on 04.03.2020. It was then stated that the Authorized Officer was appointed on the society under Section 77-A of the M.C.S. Act on 03.02.2018 for a period of six months only. The Authorized Officer had taken charge on 03.03.2018. It was stated by the Authorized Officer that as proper documents were not given by the Ex-Chairman, it is difficult for him to hold elections. The Divisional Joint Registrar had rejected the appeal filed by the Ex-Chairman, and even that authority has given direction to complete the election process.

The society appears to be not interested to carry out the election of the society as the basic facts regarding deposit of amount and filing of list of voters has not been complied with. Fair opportunity was given by respondent No.3 to represent the petitioners before him, but unfortunately nobody appeared. Now, the petitioner cannot say that there is basic lacuna left in the order.

6                Respondent No.5 has filed affidavit-in-reply and it is filed by one Chaturbhuj Manikrao Dhondge, who is serving as Co-operative Officer Grade-II and Liquidator of the society. It was stated that the elections of the society could not be held for want of record. When the interim order was passed, nobody challenged the said and, therefore, the impugned order which was later on confirmed, as it was not challenged, now, there cannot be challenge to the same. The proper procedure has been adopted and, therefore, this is not a fit case where the constitutional powers should be exercised by this Court.

7                At the outset, it is to be noted that the learned Advocate Mr. M.S. Deshmukh appearing for petitioners after taking us through the facts of the case and necessary documents on record tried to demonstrate as to how Ex-Chairman Mr. Jirge wants still to control the society and has gone to the

extent of making an application for deregistration of the society, which he himself had registered. From the communication or applications by the petitioners before the different authorities it was tried to be pointed out that how the enmity developed between the members of the society and the Ex-Chairman. Appointment of Liquidator is harsh step and when the Authorized Officer was appointed and he was supposed to carry out the complete process of election; could not complete it as the basic record itself was not available. When unnecessarily extreme step is taken, that too, without following the principles of natural justice, then the relief under Article 226 and 227 of the Constitution of Indian can be considered. He placed reliance on the decision in **Shireen Sami Gadiali and another vs. Spenta Co-operative Housing Society Ltd.and others** reported in **2011 (3) Bom. C.R. 465**, wherein it has been held that -

“Availability of alternative remedy is not a statutory bar to the exercise either of writ jurisdiction under Article 226 of the Constitution of India or supervisory jurisdiction under Article 227 of the Constitution of India. That is a rule of self discipline and, therefore, it is for the High Court to consider in each case whether in a particular case availability of revisional jurisdiction is an alternative remedy to the jurisdiction of this Court under Article 226 and 227 or not.”

Similar view was taken in **Chandrapur Zilla Sahakari Krushi and**

**Gramin Bahuudeshiya Development Bank Ltd. & etc. etc. vs. State of Maharashtra and others [2004 (3) Bom.C.R. 889].** It has been held that - *“If there is violation of Article 300-A of the Constitution which amounts to taking away property of the society without hearing, therefore, pre-decisional hearing even for interim orders cannot be dispensed with because effect of the order is immediate, grave and prejudicial to crystalised and vested rights.”* He submitted that all those misdeeds have been considered by Mr. Jirge and even the Government appointed Officer could not do anything. The concerned authority ought not to have taken such harsh step of appointing the Liquidator.

8           Per contra, the learned APP as well as learned Advocates for respondent Nos.4 and 5 strongly opposed the petition. They submitted that whatever steps have been taken were known to the petitioners and other members. They have rather not acted promptly and had not utilized the situation of appointment of Authorized Officer. They have kept mum for a long period. The voters list was even directed to be prepared and with the help of other office bearers of the society or members of the society the list could have been prepared. Even the amount required to be deposited with the authority for holding elections were not deposited at all. The petitioners have not taken prompt decisions and action and, therefore, the said situation

has arisen. The legal steps, those have been taken by the respondents, cannot be so aborted under the constitutional powers under Article 226 and 227 of the Constitution of India. Learned Advocate for respondent No.5 has relied on the decision in **State of Maharashtra and others vs. Greatship (India) Limited** [2022 SCC OnLine SC 1262], wherein reliance was placed on the decision in **City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla** [(2009) 1 SCC 168]. In the case of **Bhiwandiwalla** (supra) the Hon'ble Supreme Court has highlighted the parameters which are required to be kept in view by the High Court while exercising jurisdiction under Article 226 of the Constitution. Para Nos.29 and 30 of that Judgment which contain the views of this Court read as under :

“29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty - bound to consider whether :

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

It has been further observed that there is no question about the maintainability of writ petition under Article 226 of the Constitution of India

but the question is about the entertainability of the writ petition against the order of assessment by passing the statutory remedy of appeal. Thereupon it was held that Hon'ble Supreme Court has consistently taken a view that when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the constitutional provisions. Therefore, the respondents have prayed for rejection of the petition.

9           At the outset, before turning to the facts of the case, when the objection is taken as regards the entertainability of the petition, we would also like to consider the same. There is no dispute that Ketki Sangameshwar Sahakari Gruha Nirman Sanstha, Nideban was established under the provisions of Co-operative Societies Act and registration certificate has been issued on 31.07.1989. The petitioners and other 16 members appeared to be the members of the society. Even they had filed dispute when the Ex-Chairman has tried to act against the provisions of bye-laws of the society. The Co-operative Court has issued injunction and given declaration in respect of plot Nos.15 and 16 by allowing the said dispute. It is also not in dispute that said Ex-Chairman Mr. Jirge had filed an application for deregistration of the society and it appears that application/representation has been turned down. It is also undisputed that the elections have not been held of the

society and, therefore, time and again, the directions were given. Even the present petitioners along with others appear to have given the representation on 17.04.2017. When they had the knowledge that there is a problem as regards handing over of the record by Mr. Jirge to Authorized Officer, then, the other remedies available to the petitioners could have been invoked, may be in the form of mandatory injunction. Those documents could have been collected. There could have been a solution to the said problem and further fact is that even the amount requisite for holding election has not been deposited by the society, that is, ultimately from the pocket of each member. There is no reason assigned by the petitioners as to why the said amount was not deposited as required under the law. The petitioners cannot only blame the others. Why they have not taken any action cannot be suppressed in such a way.

10           Further, when admittedly the petitioners had the knowledge that an order came to be passed by way of interim relief on 16.10.2018, thereby process under liquidation was started; the petitioners have only given the representation to Assistant Registrar of Co-operatives. It was not challenged under Section 104 of the M.C.S. Act. When there was no compliance of all those requirements, ultimately the final order has been passed on 15.01.2019. The objection of the petitioners and others which was submitted

on 22.11.2018 was considered. Under such circumstance, it cannot be said that the principles of natural justice have not been adhered to.

11           When the final order under Section 102 of the M.C.S. Act has been passed, then the remedy to challenge the said order has been provided under Section 104 of the M.C.S. Act, which runs thus -

**“104. Appeal against order of winding up :**

(1) The committee, or any member of the society, ordered to be wound up may prefer an appeal against the final order of winding up within two months from the date of the issue of the order made under section 102, -

(a) if made by the Registrar, or the Special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government;

(b) if made by any person other than the Registrar, or special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar;

Provided that, no appeal shall lie against an order, issued under sub-clause (I), (ii) or (iii) of clause (c) of sub-section (1) of section 102.

(2) No appeal from a member under this section shall be entertained unless it is accompanied by such sum as security for the costs of hearing the appeal, as may be prescribed.”

12           The parameters laid down in **Bhiwandiwala** (supra) and **Greatship (India) Limited** (supra) are required to be considered here. When

a statutory remedy of appeal is made available, then this Court should refrain itself from exercising its powers under Article 226 of the Constitution of India. There was no question of exercise of powers under Article 226 of the Constitution i.e. supervisory powers. We do not find merit in the present petition. It deserves to be dismissed. Accordingly, it is dismissed.

( Y.G. Khobragade, J. )

( Smt. Vibha Kankanwadi, J. )

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