

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1986 OF 2023

Eaze Zone in Lakshmi Singh
Complex & Anr.

.... Petitioners

versus

State of Maharashtra & Ors.

.... Respondents

.....

- Mr. Amogh Singh i/b. D. P. Singh, Advocate for Petitioners.
- Smt. V. S. Nimbalkar, AGP for Respondent/State.

CORAM : SARANG V. KOTWAL, J.
DATE : 06th MARCH, 2023

P.C. :

1. Heard Mr. Amogh Singh, learned counsel for the Petitioner and Smt. V. S. Nimbalkar, learned AGP for the State.
2. The Petitioner No.1 is a Co-operative Society Registered under the Maharashtra Co-operative Societies Act, 1960. The Petitioners have challenged the orders dated 02/11/2022 and 28/12/2022. Vide the first order, the interim order for winding up of the society was passed by the Respondent No.2 and vide the second order, the interim order was confirmed.

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3. Learned counsel for the Petitioner invited my attention to the interim order dated 02/11/2022. It was mentioned in that order that the society was given a notice dated 13/07/2022 and a letter dated 03/10/2022 calling for certain information. Learned counsel for the Petitioner stated that no such notice or letter was served on the Petitioners. The same interim order further mentions that the office bearers of the society were directed to remain present before the Respondent No.2 on 23/11/2022 at 03.00 p.m. Learned counsel for the Petitioner submitted that since this interim order was not served on the Petitioners, they were not aware of these proceedings and did not know the date fixed for hearing. Ultimately the final order came to be passed on 28/12/2022 only on the ground that the office bearers and members of the society had not remained present.
4. Learned counsel for the Petitioner relied on the averments made in the Petition in sub-paragraph Nos.(ix)(x)

and (xi), in paragraph No.4 of the Petition. Specific grounds are raised that there was absolutely no communication prior to initiation of proceedings u/s 102 of the Maharashtra Co-Operative Societies Act, 1960 (for short 'MCS Act'). Learned counsel also relied on the sub-section 2 of section 102 of MCS Act which mandates that the order made under sub-section 1 of section 102 is required to be communicated to the society calling upon them to submit their explanation within a month from the date of issuance of such order. In the present case, no such order was ever served on the Petitioner society and therefore there is complete breach of sub-section 2 of section 102 of MCS Act. He therefore submitted that the impugned orders be set aside and the Petitioners be given an opportunity to appear before the Respondent No.2 and put forth their contention.

5. Learned AGP for Respondent No.2 submitted that they have filed an affidavit-in-reply. I have perused the copy of that affidavit-in-reply. In that reply nowhere it is denied that the interim order or the communication referred to in the interim orders were never served on the Petitioners. The averments

made by the Petitioners have remained unchallenged. Therefore, quite clearly it is in breach of section 102(2) of the MCS Act. Even while issuing the interim order ,there is nothing to show that any communication or notice was served on the Petitioner society. In this view of the matter, the Petition deserves to succeed.

6. Hence, the following order :

ORDER

(i) The Petition is allowed in terms of prayer clause (a), which reads thus :

“(a) That this Hon’ble Court be pleased to set aside the Impugned Orders dated 2nd November 2022 and 28th December 2022 passed by Respondent No.2;”

(ii) The Respondent No.2 shall give prior notice and obtain proper acknowledgment for initiating winding up proceedings if found necessary.

(iii) The Writ Petition stands disposed of accordingly.

(SARANG V. KOTWAL, J.)