

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

**SANTOSH
SUBHASH
KULKARNI**

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2023.07.05
14:22:19 +0530

WRIT PETITION NO. 9141 OF 2022

Norbert Joseph Rodrigues
Aged 61 years, Adult Indian, Inhabitant
Occupation : Business, R/o. Flat
No.301, Shivkrupa Tenants Cooperative
Housing Society Ltd., Plot No.9, Jakeria
Bunder Road, Cottongreen West,
Mumbai – 400 033

...Petitioner

Versus

- 1 Divisional Registrar Joint Registrar of
Co-operative Societies Mumbai
Division, Malhora House, 6th floor Opp.
GPO, Fort, Mumbai – 400 001.
- 2 Shivkrupa Tenant CHS Ltd.
Plot No.9, Jakeria Bunder Road,
Cottongreen West, Mumbai – 400 033
- 3 Ramdas Kadam – Chairman
Age – Not Known, Occu: Business
Flat No.104
- 4 Narayan Natwarlal Rajput
Age – Not Known, Occu: Business
Flat No.103
- 5 Nischal Bagal – Treasurer
Age – Not Known, Occu: Business
Flat No.204
Nos.3 to 5 R/o Shivkrupa Co-operative
Housing Society Ltd., Plot No.9, Jakeria
Bunder Road, Cottongreen West,
Mumbai – 400 033
- 6 Dattaram Ramchandra Kadam,
Chairman, Shivkrupa Tenants CHS
Ltd., Plot No.9, Jakeria Bunder Road,
Cottongreen West, Mumbai – 400 033
- 7 Mrs. Anjali Rajput
Committee Member, Shivkrupa Tenants
CHS Ltd., Plot No.9, Jakeria Bunder
Road, Cottongreen West, Mumbai – 400
033

...Respondents

Mr. Durgaprasad Sabnis, a/w Mayankal Mishra, i/b Lex Firmus, for the Petitioner.

Mr. S. H. Kankal, AGP for the State/Respondent No.1.

Mr. Mayur Khandeparkar, a/w Rakesh Sawant and Shamina H., i/b Arhat Legal, for Respondent Nos.3 to 5.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 13th APRIL, 2023

PRONOUNCED ON: 4th JULY, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The petitioner takes exception to a judgment and order dated 8th July, 2022 passed by Divisional Joint Registrar, Co-operative Societies, Mumbai, in Revision Application No.69 of 2021, whereby the revision application preferred by respondent Nos.2 to 5 came to be partly allowed and the order of disqualification of the then office bearers of Shivkrupa Co-operative CHS Ltd. for the period of four years passed by the Assistant Registrar, Co-operative Society, under Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 ("the Act, 1960"), came to be set aside.

3. The petition arises in the backdrop of the following facts:

(a) Shivkrupa Tenants Co-operative Housing Society – respondent No.2, is a society registered under the Act, 1960. Respondent No.3 was the Chairman; respondent No.4, the Secretary and respondent No.5 the Treasurer of respondent No.2 Society. In the year 2016-2017 respondent Nos.3 to 5 committed default in convening and holding the Annual General Meeting (“AGM”) of the Society within the period stipulated under Section 75(1) of the Act, 1960. The petitioner made a complaint before the Assistant Registrar, Cooperative Societies.

(b) A show cause notice was issued to the members of the Committee on 17th December, 2018. The Society and respondent Nos.3 to 5 furnished an explanation. It was, *inter alia*, contended that on 21st September, 2017 itself the Society had conveyed the reasons for the delay in holding the scheduled AGM including the situation that arose on account of the trespass on the society’s office premises.

(c) By an order dated 29th May, 2019, the Assistant Registrar, Co-operative Societies, found that respondent Nos.3 to 5 had committed default in holding the Annual General Body Meeting in the year 2016 – 2017 within stipulated period and,

thus, proceeded to disqualify for being elected and to be a member of the committee for the period of five years.

4. Being aggrieved, respondent Nos.2 to 5 preferred a revision, being Revision Application No.306 of 2019, before the Divisional Joint Registrar. By an order dated 13th November, 2019, the Divisional Joint Registrar was persuaded to partly allow the revision and set aside the order dated 29th May, 2019 passed by the Assistant Registrar and remit the matter back to the Assistant Registrar for afresh consideration and decision after ascribing reasons for the decision as the Assistant Registrar had not considered the justifiability of the explanation furnished by the revision applicants nor had assigned any reason for disqualifying the revision applicants for a term of five years.

5. Post remand, by an order dated 3rd February, 2021, the Assistant Registrar, in exercise of the powers under Section 75(5) of the Act, 1960, again disqualified respondent Nos.3 to 5 from being elected and to be a member of the Committee, now for a term of four years.

6. Respondent Nos.2 to 4 again preferred revision before the Divisional Joint Registrar, being Revision Application No.16 of 2021. By the impugned order, holding that despite a clear

direction to decide the matter afresh by ascribing reasons, the Assistant Registrar had not given any reasons and in the process, the Assistant Registrar did not advert to the justifiability of the explanation offered by respondent Nos.2 to 5 for not holding the AGM within the stipulated period, the Divisional Joint Registrar was impelled to set aside the order passed by the Assistant Registrar.

7. Being aggrieved, the petitioner – original complainant has approached this Court.

8. I have heard Mr. Sabnis, the learned Counsel for the petitioner, Mr. Kankal, the learned AGP for the State - respondent No.1 and Mr. Khandeparkar, the learned Counsel for respondent Nos.3 to 5. With the assistance of the learned Counsel for the parties, I have perused the material on record including the various orders passed by the Authorities below.

9. There is not much controversy over facts. The fact that respondent Nos.3 to 5 were the office bearers of respondent No.2 Society and the petitioner was also a member of the committee is, incontrovertible. In accordance with the provisions of Section 75(1) of the Act, 1960, the Annual General Meeting of the Society for the year 2016 – 2017 was to be held on or before 30th September, 2017. Indisputably, the AGM could not be held

before 30th September, 2017. As noted above, the Assistant Registrar was initially persuaded to disqualify respondent Nos.3 to 5 for a term of five years and, later on, upon remand, reduce period of disqualification to four years. By the impugned order the Divisional Joint Registrar has set aside the order of disqualification for non-application of mind by the Assistant Registrar.

10. Mr. Sabnis submitted that having found that respondent Nos.3 to 5 had committed a clear default in holding the AGM within the stipulated period, the Divisional Joint Registrar could not have interfered with the order passed by the Assistant Registrar, which was in conformity with the mandate contained in Section 75(5) of the Act, 1960. It was submitted that the reasons assigned by respondent Nos.3 to 5 for not holding the meeting could not have been countenanced. The impugned order has the effect of defeating the provisions of Section 75 of the Act, 1960 as the office bearers would flout the statutory mandate with impunity if the statutory provisions are not given effect to, in letter and spirit, urged Mr. Sabnis.

11. In opposition to this, Mr. Khandeparkar, the learned Counsel for respondent Nos.3 to 5 submitted that the Assistant Registrar had passed the orders of disqualification in a

mechanical manner and without advertent to, much less evaluating, the justifiability of the explanation offered by respondent Nos.2 to 5 for not holding the AGM and, therefore, the Divisional Joint Registrar was well within his rights in interfering with such laconic order. Therefore, no case for interference in exercise of the extraordinary writ jurisdiction is made out, urged Mr. Khandeparkar.

12. The relevant part of Section 75(1) and 75(5) of the Act, 1960, read as under:

“75. Annual General Meeting.— (1) Every society, shall within a period of three months next after the date fixed for making up its accounts for the year under the rules for the time being in force, call a general meeting of its members:

.....

(5) If default is made, in calling a general meeting within the period or, as the case may be, extended period, prescribed under sub-section (1), or in complying with sub-section (2), (3) or (4), the Registrar may by order, declare any officer or member of the committee whose duty it was to call such a meeting or comply with sub-section (2), (3) or (4) and who without reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified for being elected and for being any officer or member of the committee for such period not exceeding three years, as he may specify in such an order and, if the officer is a servant of the society, impose a penalty on him to pay an amount not exceeding one hundred rupees. Before making an order under this subsection, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him.”

13. A plain reading of the aforesaid provisions would indicate that in the event of default in holding the meeting within the period prescribed under Sub Section (1), or in complying with

Sub-Section (2), (2A) (3) or (4) of the said Section, the Registrar may by order declare any Officer or member of the committee whose duty it was to call such a meeting or comply with Sub Section(2), (2A) (3) or (4) to be disqualified for being elected or for being an officer or member of the committee for such period not exceeding five years, and also impose a penalty not exceeding five thousand rupees if the officer happened to be the servant of the society.

14. Evidently, the Registrar has to first arrive at a finding that a default has been committed in compliance with the mandatory provisions contained in Section 75 and, thereafter, pass an order of disqualification of the officer or member of the committee, who was in default or impose the penalty, as the case may be. The said power is, however, not unregulated or uncannalised. The expression, “who without any reasonable excuse failed to comply with any of the aforesaid Sub Sections” is of critical significance. It envisages an opportunity to the person, who is allegedly in default, to show cause. Simultaneously, if a cause is shown, there is a corresponding duty on the Registrar to ascertain as to whether the cause so assigned constituted a reasonable excuse. Default *per se* does not entail disqualification. Registrar is statutorily enjoined to

arrive at a finding that there was no reasonable excuse. In a given case, if the officers or members of the committee are in a position to demonstrate that there was reasonable excuse for not holding the AGM, the Registrar would be justified in not visiting such officer or member with the consequence of disqualification or penalty.

15. The aforesaid nature of the power under Section 75 (5) of the Act, 1960, was adverted to by this Court in the case of *Dilip Bhagwantrao Ingole and Others Vs. Commissioner of Co-operation and Registrar of Co-Operative Societies Maharashtra State, Pune and Others*¹. The learned Single Judge of this Court, on an analysis of the provisions contained in Sub Section(4) and (5) of Section 75, enunciated the principles of natural justice with which the aforesaid provisions are informed.

The relevant observations read as under:

“6. In view of the provisions of Section 75(4) it is clear that balance sheet, profit and loss account, audit memorandum submitted by the auditor with the managing committee report shall be placed for adoption before the annual general meeting. In view of the provisions of Section 75(5) if there is a failure in calling the annual general meeting or any compliance with the provisions of Sections (2), (3) and(4) of Section 75, the Registrar may by order declare a Member of the Committee whose duty it was to comply with the said provisions, who without any reasonable excuse failed to comply with the same, disqualified for being elected or for being a member of the committee for such period not exceeding three years. This is an administrative action which may be taken by the Registrar and as per this administrative action the concerned members of the

1 2009 (2) Mh.LJ 471.

committee maybe declared disqualified for being elected or for being a member of the committee for a period not exceeding three years due to failure to comply with Section 75(4). However, the section also makes it clear that for taking the action the Registrar must come to the conclusion that the concerned members of the committee had failed to comply with the provisions without any reasonable excuse and to find out whether there was any reasonable excuse for noncompliance of that direction, the Registrar is expected to give reasonable opportunity to the person concerned of showing cause against the action proposed to be taken with regard to him. It means opportunity has to be given to the concerned member of the society to explain as to why he could not follow the relevant provisions and if the Registrar comes to the conclusion that the concerned member had reasonable excuse or justifiable reasons for not complying the provisions, he may not take any action under Section (5) if after giving an opportunity he finds that there was no reasonable excuse, he may take action as per the provisions of sub section (5). Therefore it is necessary to give reasonable opportunity to the person to explain the reasons for non compliance, without which action cannot be taken....."

(emphasis supplied)

16. Another learned Single Judge of this Court in the case of ***Gaurav K. Desai Vs. The State of Maharashtra and Others*** in ***Writ Petition No.11699 of 2014***, expounded the nature of exercise of power by the Registrar under Section 75 as under:

"8. The scheme of Section 75 needs to read not in isolation. All the sub-clauses are connected and interlinked. There are certain connected obligation of the authorities also (Registrar) in case no meeting convened or able to take decisions. No such steps were taken even by the authorities within the prescribed period. also (Registrar) Sub-section (5) of Section 75 itself provides that irrespective of earlier provisions of Sub-sections (1), (2), (2A), (3) and (4) in case of default, before imposing any penalty, reasonable opportunity needs to be given to the concerned parties. This section itself provides that the authority must give all the opportunities and ask for an explanation for the failure to comply with the provisions if any. This section itself provides the concept of natural justice - "who without any reasonable excuse" fail to comply with the mandate of the provisions. It is also a mandate of Sub-section (5) of Section 75 that the authorities

should give an opportunity to explain “reasonable excuse” even if any officer/servant fails to comply with the provisions. This itself follows that if a reasonable excuse and/or reasonable case is made out, the authority irrespective of earlier provisions of Section 75, may pass an appropriate order and/or may reduce penalty/punishment so proposed, and/or may impose “nil”punishment or “nil” penalty. The principles of natural justice, therefore, which are otherwise inherent in any such provisions of law, specifically when it comes to taking any action or deciding civil rights of the parties,must be followed. In the present case, Sub-section (5) of Section 75 is very clear about the principles of natural justice to be followed in the strict sense.

.....

11. Reasonable cause and/or sufficient reason needs to be considered in the facts and circumstances of the case but in situation like this where the third person/parties are involved and when the petitioners/officers at the relevant time took steps within the prescribed period but unable to fulfill the same within the statutory period for the ground so referred, that itself cannot be the reason for the punishment of this nature. I am inclined to observe that if “sufficient cause” is made out,it is not the mandate of the provisions that the authority should impose the maximum punishment in every such default. The discretion and the power need to use/utilize in accordance with law. Reasonable and fair approach is required, if sufficient cause is made out and/or where there was no intentional delay and/or intended inaction to breach provisions, which are brought into with effect from 15.2.2013 and no prior steps/ intimation/ circular issued to the society in advance, about such mandate....”

17. A fair reading of the provisions contained in Section 75 (5) of the Act, 1960, thus justifies an inference that the opportunity of hearing before an officer or member of committee is visited with disqualification or penalty, as case may be, is implicit at two stages. First, the Registrar must provide an opportunity to the person affected to show as to whether there was a reasonable cause for not holding AGM. Second, the Registrar must also weigh the justifiability of the reason ascribed by such

person and record a finding. The reason ascribed by the affected person may bear upon the action, which the Registrar may be persuaded to take. Convinced with the reasonability of the excuse, the Registrar may not pass any order of disqualification or penalty or the Registrar may be persuaded to determine the measure of the remedial action. It is imperative to note that the legislature has used the expression, “for such period not exceeding five years”. Thus, disqualification need not necessarily be for full five years. Having regard to the nature of the default as well as the reasons ascribed for the same, the Registrar may disqualify the person in default for a lesser period.

18. Reverting to the facts of the case, first and foremost, it is necessary to note the reasons conveyed by respondent Nos.2 to 5 to the Assistant Registrar on 20th September, 2017 (Exhibit-D to the affidavit-in-reply). The Assistant Registrar was apprised that the AGM was scheduled to be held on 24th September, 2017. However, the Society office was illegally encroached by a tenant and the entire record of the Society was lying in the said office. The said act of encroachment had resulted in institution of the proceedings by the landlord. In view of the said development in the intervening period, the AGM could not be held as scheduled.

19. Whether the aforesaid explanation was justifiable. An order dated 19th September, 2017 passed by the Court of Small Causes in RAE Suit No.1377 of 2017, whereby the parties were directed to maintain *status quo*, lends credence to the claim of the Society. Another order dated 10th September, 2018, whereby the Notice of Motion No.3425 of 2017 came to be dismissed, in terms records that the contention of the defendants in the said suit that the plaintiff therein had himself broken the wall between the suit shop and the office premises of the Society appeared to be more probable. The material on record thus indicates that in respect of the alleged encroachment over the society's office premises, proceedings were instituted before, and orders were passed by, the Courts.

20. There is material to show that AGM was duly convened on 24th September, 2017. The office premises was allegedly broken into and trespassed few days prior to 20th September, 2017. Respondent Nos.2 to 5 duly communicated the reasons to the Assistant Registrar a couple of days prior to the scheduled date of the AGM. Cumulatively these factors do not indicate that the cause assigned by respondent Nos.2 to 5 was wholly unsustainable.

21. In the backdrop of the aforesaid material, it was incumbent upon the Assistant Registrar to consider the justifiability of the explanation offered by respondent Nos.2 to 5 for not holding AGM as scheduled. Both the orders passed by the Assistant Registrar squarely lack consideration on the aspect of the reasons assigned by respondent Nos.2 to 5 for not holding the AGM. The order dated 3rd February, 2021 suffers from the vice of complete non-application, despite remand by the Divisional Joint Registrar with a specific direction to consider the explanation, and support the decision with reasons. In the circumstances, the learned Divisional Joint Registrar was fully justified in interfering with the order passed by the Assistant Registrar on 3rd February, 2021 as it was perverse.

22. Resultantly, no interference is warranted in exercise of the writ jurisdiction. Hence, the petition deserves to be dismissed.

23. The petition stands dismissed.

No order as to costs.

Rule stands discharged.

[N. J. JAMADAR, J.]