

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 492 OF 2016

Prakash Tatoba Bage

... Petitioner

Versus

The Authorized Officer, Hatkanangale Shetkari
Sahakari Pani Puravathe Sanstha Maryadit & Ors.

... Respondents

Mr. Utkarsh Desai i/b. Mr. Prashant Bhavake for the petitioner.

Mr. S.D. Rayrikar, AGP for the State/respondent nos. 3 to 5.

CORAM: G. S. KULKARNI, J.

DATED: 19 January 2023

P.C.

1. Heard Mr. Desai, learned counsel for the petitioner and Mr. Rayrikar, learned AGP for the State/respondent nos. 3 to 5.

2. It is stated that respondent nos. 1 and 2 are privately served, however, they are not represented. Let affidavit of service be placed on record within two days from today. Even otherwise, considering the orders which have been passed on the present petition, no prejudice would be caused to respondent nos. 1 and 2 if the petition is disposed of.

3. Heard finally by consent of the parties as appearing.

4. This petition is directed against an order dated 2 September, 2015 passed by the Hon'ble Minister, Cooperation, Marketing and Textile Department whereby the Revision Application filed by the petitioner under section 154 of Maharashtra Cooperative Societies Act (for short "the MCS

Act”) against an order dated 3 July, 2014 passed by the Divisional Joint Registrar, Cooperative Societies, Kolhapur Division, Kolhapur has been rejected.

5. Briefly the facts are: An enquiry was initiated by the authorized officer/respondent no. 1 under section 88 of the MCS Act and a report to that effect was made on 17 August, 2011, by which the petitioner was held responsible for the damages being caused to respondent no. 2/Society in the tune of Rs.2,24,642/-. The petitioner contended that no opportunity was granted to him to participate in the enquiry undertaken by respondent no. 1 under section 88 of MCS Act, hence such a report as made against him ought not to have been accepted. The petitioner assailed the report dated 17 August, 2011 made under section 88 of the MCS Act by approaching the Divisional Joint Registrar under section 152 of the MCS Act. The Divisional Joint Registrar by his order dated 3 July, 2014 rejected the appeal. Against the rejection of the appeal, the petitioner invoked the jurisdiction of Hon’ble Minister for Cooperation under section 154 by filing Revision Application, which has been rejected by the impugned order.

6. Learned counsel for the petitioner in assailing both the said orders has made the following submissions:

- (i) It is his submission that in deciding the appeal filed by the petitioner under section 152 of the MCS Act, the Divisional Joint

Registrar Cooperative Societies has failed to give any reason whatsoever in rejecting the appeal. The Court's attention is drawn to the contents of the impugned order to support such contention. It is submitted that on such ground, the impugned order is rendered illegal.

(ii) The impugned order has proceeded on a completely erroneous premise inasmuch as, statement which was made in the enquiry proceedings by one Bapusaheb Tombare, who was also the Chairman of respondent no. 2/Society for a limited period and who had stated that he would make good the amount of Rs.2 lakhs and it was not the petitioner's contention. It is thus a submission that there is no material whatsoever in the enquiry report that the petitioner at any point of time conceded that he would make good the amount of damages. It is submitted that only on such premise, as if, the petitioner has admitted any default on his part, the impugned order has been passed by the Hon'ble Minister. He submits that such a reasoning is not borne out by record and hence on such count as well, the impugned order deserves to be quashed and set aside.

7. On the other hand, Mr. Rayrikar, learned AGP has supported the impugned order. It is his submission that appropriate material has been taken into consideration by the Hon'ble Minister to pass the impugned order. His submission is that the petition ought to be dismissed.

8. Having perused the order passed by the Divisional Joint Registrar Cooperative Societies on the appeal filed by the petitioner as also the impugned order passed by the Hon'ble Minister for Cooperation in the Revision Application, in my opinion, there is much substance in the contentions as urged on behalf of the petitioner. On a perusal of the order passed by the Divisional Joint Registrar, it is quite clear that no reasons whatsoever are set out in rejecting the petitioner's appeal. The contents of such order are only a narration of the facts and contents of the report. None of the grounds as urged by the petitioner in the appeal have been dealt and/or taken into consideration or any adjudication in that regard has been made. Thus, such an order passed on the petitioner's appeal per se was required to be interfered by the Hon'ble Minister in the Revision proceedings. However, it appears that the situation in the revision proceedings was not different. It appears that basic contentions as urged by the petitioner in the appeal have also not been addressed in the order passed by the Hon'ble Minister. The Hon'ble Minister, however, appears to have proceeded on a completely different footing that purportedly the petitioner had admitted his acts and had made a statement in the enquiry proceedings that he would compensate the Society by depositing Rs.2 lakhs. It clearly appears from the record that such a statement was made by one Bapusaheb Tombare and not by the petitioner, which can be seen from the internal page of the report as prepared by the Authorized officer under section 88 of MCS Act. Thus, there is much substance in the contentions as

urged on behalf of the petitioner that once the Appellate Authority had not adjudicated on the grounds of appeal as urged by the petitioner, it was expected that the Revisional Authority would look into the contentions and pass appropriate orders in accordance with law. However, both the forums have not addressed such grounds.

9. In the aforesaid circumstances, the petition would be required to be allowed. Hence, the following order:

- (i) The order dated 3 July, 2014 passed by the Divisional Joint Registrar Cooperative Societies and the impugned order dated 2 September, 2015 passed by the Hon'ble Minister for Cooperation are quashed and set aside.
- (ii) The proceedings are remanded to the Divisional Joint Registrar for a fresh denovo adjudication of the appeal as filed by the petitioner.
- (iii) The Divisional Joint Registrar shall hear the parties afresh and pass an order in accordance with law.
- (iv) All contentions of the parties are expressly kept open.

10. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J)