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wp 3148.23 w 3149.23 R.odt

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

**WRIT PETITION NO. 3148 OF 2023
WITH
WRIT PETITION NO. 3149 OF 2023**

**DHANWANTARI SAHAKARI GRUH-NIRMAN
SANSTHA MARYADIT
VERSUS
THE ASSISTANT REGISTRAR,
COOPERATIVE SOCIETIES, LATUR AND ANOTHER.**

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Mr. Shyam C. Arora, Advocate for the petitioner
Mr. A.S. Shinde, AGP for respondents 1 and 2
Mr. S.B. Solanke, Advocate for respondent No.3.

**CORAM : S.G. CHAPALGAONKAR, J.
DATE :- 19th JULY, 2024.**

ORDER :-

1. Since common question of law and facts is involved, both petitions taken up together for hearing.
2. The petitioners impugn the order dated 27.7.2021 passed by respondent No.2 – Divisional Joint Registrar, Cooperative Societies, Latur under Section 154 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as, “the MCS Act”) and seeks direction for registration of revision petition filed by them against order passed by the Assistant Registrar – Respondent NO.1, under Section 23(2) of the MCS Act.
3. Mr. Shyam Arora, learned advocate for the petitioner submits that the petitioner is a registered cooperative housing society

formulated for the purpose of development of residential colony. The respondent NO.3 purchased plot from original member without seeking 'No objection certificate' (NOC) from the petitioner society therefore his application seeking membership was rejected. He approached the respondent No.1 – Assistant Registrar (Cooperative Societies) under Section 23(2) of the MCS Act, seeking direction against the society to grant him membership. Respondent No.1 entertained such appeal and issued directions against petitioner society to accord membership in favour of respondent No.3. Aggrieved by decision of respondent No.1, petitioner society approached respondent No.2 by filing Revision Application under Section 154 of the MCS Act, 1960. However, respondent No.2 refused to register the revision giving the reason that the order passed by respondent No.1 under Section 23(2) of the Act is final and he has no jurisdiction to entertain the revision against such order.

4. According to Mr. Arora, any order passed by the respondent No.1 is revisable under section 154 of the MCS Act and respondent No.2 was the competent authority to deal with such revision. In support of his contention, he relies upon the judgment of this Court in the matter of ***Shireen Sami Gadiyal vs. Spenta Co-operative Housing Society reported in 2011 (3) Mh.L.J. 486*** as well as the order dated 30.7.2019 passed by this court (principal Seat) ***in W.P. No. 1765 of 2016 between Jai Anant Sagar Cooperative Housing Society vs. The Divisional Joint Registrar and others.***

5. Mr. Arora also relies upon the notification dated 24.11.2021 issued by the Department of Cooperation, Marketing and Textile under

Section 3 of the Act in supersession of the Government notifications which were operating in the field prescribing powers of various officers and its delegates.

6. Per contra, Mr. Shinde, learned AGP, submits that the issue is no more res-integra. The Divisional Joint Registrar has no jurisdiction to entertain and decide the revision application against the orders which are passed by delegate of the Registrar. The Divisional Joint Registrar being subordinate to the Registrar, cannot examine the legality and validity of the orders passed by delegate acting under the control of the Registrar.

In support of his submissions, he relies upon the judgment of this court in the case of *“Bajrang Labour Cooperative Society vs. Divisional Joint Registrar Cooperative Societies, reported in 2016(2) Mh.L.J. 849.*

7. Having considered submissions advanced by the learned advocates appearing for respective parties and after considering the documents tendered into service, it can be gathered that the petitioner society seeks to impugn the order passed by the Assistant Registrar U/sec.23 of the MCS Act declaring membership in favour of respondent No.3. The Assistant Registrar exercised power of the Registrar, conferred under Section 23(3) of the MCS Act. The reference can be given to the office order APARDA 0519/CR.59/13-C/dated 24th November, 2021 issued by the Department of Cooperation, Marketing and Textile, in exercise of powers under Section 3 of the Act. The Government of Maharashtra appointed officers specified in Column No. (2) of the Schedule annexed thereto, to assist the Registrar and conferred on the

said officers the powers of Registrar as specified in Column No. (3) of the Schedule for the area specified in Column No. (4) thereof. The entry NO.7 of the said notification reads as under :-

Sr .No.	Designation of Officers	Powers	Area
(1)	(2)	(3)	(4)
7.	Deputy Registrars and Assistant Registrars in Taluka/Wards	All powers of the Registrar under the Act and under the said rules not being powers under :- (a) Section 21-A, Section 9(4), 12(3), Explanation II to sub-section (3) of section 29 proviso to sub section (3) of section 44, proviso to sub-section (2) of section 66, 3 rd proviso of sub clause (a)(b) and (d) of sub section (1), sub-section (6) and (7) of section 81, 90(2), section 110A, 134, 142, 144-4A(1) (h), proviso of sub-section (2) of section 144-4A, 2 nd proviso of section 144-7A, 144-9A, 144-10A, sub-section (3) section 144-11A, sub section (1) of section 144-12A, 144-24A, 148(3), 152, 153, 154 and 159	Taluka/Ward
		(b) Rules 2(c), 11(3), 22(2), 42, 43(2), 46-A, proviso to sub-rule (1) of rule 62, 69, 74, 85(9), sub-rules (10), (11), (14) and (15) of rules 93, 95, 97, sub-rules (1) and (4) of rule 100 in so far as they relate to sale by the Maharashtra State Cooperative Agricultural and Rural Development Bank, sub-rule(2) of rule 102 so far as they relate to sale by the Maharashtra State Cooperative Agriculture and Rural Developement Bank, 103(2), sub-rules (2) and (3) of rule 107 in so far as they relate to scale of deposits for execution of decrees 3 rd proviso of clause (f) of sub-rule(11) of Rule 107.	

8. The reference to aforesaid notification leave no room of doubt, that the Assistant Registrar exercises the powers of Registrar U/Section 23(2) while dealing with challenge to decision of society to refuse membership. Therefore, revision under Section 154 of the MCS Act can be entertained only by the State Government and not by any officer of the rank of Registrar or subordinate officer to the Registrar. It

is a settled law that there cannot be two revision applications in respect of one and the same order. This Court in the matter of *Shireen Sami (supra)* held that the revisional jurisdiction of the State Government and Registrar is not concurrent and operates in two separate compartments. The State Government can exercise jurisdiction in relation to the orders and decision of the Registrar, Additional Registrar and Joint Registrar, where, as the Registrar has revisional jurisdiction in relation to the orders or decisions passed by any other officer. In the present case, although at the first blush, it appears that the order passed by the Assistant Registrar would be revisable before the Divisional Joint Registrar, such revision would not be maintainable, since the Assistant Registrar, exercises the powers of Registrar under Section 23(2) being delegate of the Registrar. Therefore, the order passed by the Assistant Registrar under Section 23(2) of the Act will have to be termed as order of Registrar for all purposes and challenge against such order can be entertained only by the State Government in revisional jurisdiction conferred Under Section 154 of the MCS Act.

9. Consequently, no jurisdictional error is discernible from the order impugned. Hence, writ petitions stand dismissed. However, petitioner would be at liberty to take up appropriate remedy against order of Asst. Registrar in accordance with law.

[S.G. CHAPALGAONKAR]

JUDGE

grt/-