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wp 7813.22 R.odt

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

WRIT PETITION NO. 7813 OF 2022

**ANANDWADI SHETKARI SAMUHA IRISHI SAHITYA
PURVATHA VA DHANYA GODAM SEVA
SAHAKARI SANSTHA AND OTHERS
VERSUS
THE DIVISIONAL JOINT REGISTRAR AND OTHERS.**

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Mr. Shahaji B. Ghatol Patil, Advocate for petitioners
Mr. S.N. Kendre, AGP for respondent Nos. 1 to 3
Mr. M.V. Nagargoje, Advocate for respondent Nos. 4 and 5.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 29TH JULY, 2024.

ORDER :-

1. The petitioners/societies impugn the order dated 30.6.2022 passed by respondent No.1 – Divisional Joint Registrar, Cooperative Societies, Aurangabad in Misc. Application Nos. 54 of 2021 to 63 of 2021, by which directions have been issued to decide the preliminary objections filed by the petitioners alongwith main application.

2. Respondent Nos. 4/5 instituted proceeding under Section 21-A of the Cooperative Societies Act (hereinafter referred to as “the MCS Act” for brevity) on the ground that petitioner societies have been registered by misrepresentation. The classification is wrongly done. The Government Resolution dated 3rd August, 1998 prohibits registration of any Seva Sadhan Sampati Sanstha in Maharashtra, however, registration is granted contrary to the Government Policy. At the time of granting application for registration, the procedure as contemplated under Sections 3 to 11 of the MCS Act has been flouted.

3. The petitioner societies caused their appearances and filed a preliminary objection to the very maintainability of the application under Section 21A of the MCS Act at the behest of respondent nos. 4/5. Respondent No.1, after hearing all concerned on preliminary objection, passed the impugned order directing that the preliminary objections would be decided alongwith application under Section 21-A. Petitioners are aggrieved by aforesaid decision.

4. Mr. S.B. Ghatol Patil, learned advocate for the petitioners vehemently submits that the respondent Nos. 4 and 5 are unconcerned with the business of the petitioners/societies. Even they are not the residents of the area of business of the petitioners/societies. The petitioners/societies have been registered after following due process of law in the year 2010-2011, whereas, the application for de-registration has been filed under Section 21-A after ten years for political reasons. He would submit that the powers under Section 21-A of the MCS Act cannot be exercised on application made by any person who is unconcerned with the business of the society. The Registrar could not have entertained such application as an adversarial litigation. He would, therefore, submit that many issues, right from maintainability of the application, limitation, were raised by way of preliminary objection and respondent No.1 was under obligation to decide the same before dealing with the allegations made in the application under Section 21A.

5. To buttress his submissions, Mr. S.B. Ghatol Patil, learned advocate for the petitioners relied upon following judgments :-

1] Order dated 4th August, 2021 in the matter of ***Nandakumar Laxman***

Dakhore Vs. State of Maharashtra W.P. No. 8089 of 2021,

2] The judgment of the Supreme Court of India in the matter of *Tata Teleservices Ltd. vs. State of Chattisgarh and others reported in (2022)105 GSTR 154 : 2022 SCC Online 941*

3] Judgment in the matter of *Sukhbiridevi and others vs. Union of India and others reported in 2022 SCC Online SC 1322* and

4] *VM. Salgaocar and Bros. Vs. Board of Trustees of Port of Mormugao and another reported (2005) 4 SC 613.*

6. Per contra, Mr. M.V. Nagargoje, learned advocate appearing for respondent Nos.4 and 5 and Mr. S.N. Kendre, learned AGP appearing for respondent Nos. 1 to 3 supports the impugned order. According to them, impugned order does not decide anything on merit. Only direction is given to consider the objections alongwith the main application. As such, no prejudice is caused to the petitioners. Therefore, they urged to reject the writ petition.

7. Having considered submission advanced and, particularly, the legal issues raised on behalf of the petitioner, it can be gathered that firstly, the petitioners are objecting to the maintainability of the application under Section 21A at the best of respondent Nos. 4/5. Section 21A of the MCS Act, that reads as under :-

“21A. [De-registration of societies. [Section 21-A was inserted by Maharashtra 20 of 1986, Section 11.]

(1)If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served,

[or any primary agricultural co-operative credit society using the word 'Bank', 'Banking', 'Banker' or any other

derivative of the word 'Bank' in its name,] he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society :

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any Court merely on the ground that individual notice is not served on any such member."

8. The plain reading of aforesaid provision would show that the Registrar is invested with the powers to direct de-registration of the society after recording his satisfaction that it has been registered on account of mis-representation, or its object have been achieved or not served. In the present case, respondent Nos. 4/5 filed application invoking aforesaid provision. The Registrar is, therefore, empowered to make an inquiry and take his own decision, after affording opportunity of hearing to the societies and its members. It is true that such powers can not be allowed to be turned into adversarial action, however, the Registrar, on getting information regarding existence any ground for de-registration of the society, can suo-motu exercise his powers and only because such information is brought to his notice by any third person, he need not ignore the same. Therefore, the issue whether there are sufficient grounds to proceed further under Section 21A can be ascertained only after parties are given opportunity to place on record the requisite material in this regard during hearing of application.

9. The second contention sought to be raised on behalf of the petitioners is that, they are functioning since last ten years. The application for de-registration is filed after such a long gap. Hence, the action is time-barred. Apparently, Section 21A does not prescribe specific period of limitation. If the Registrar is satisfied that the registration is obtained by exercise of fraud or mis-representation, his powers cannot be fettered by putting artificial limitation.

10. Therefore, reliance placed on behalf of petitioners on various judgments which lay down that the issue of limitation can be decided as a preliminary issue, on admitted facts, cannot be strictly applied in the present case. The inquiry, as contemplated under Section 21A is summary in nature. The rigors of procedural law would not apply *stricto-senso* in such proceedings. Even such proceeding is not expected to be decided in a piecemeal manner. Therefore, if the Registrar has formed the opinion that all the issues can be decided at a time alongwith the application, no fault can be found in the approach of the Registrar. The petitioners would be at liberty to raise all the issues during the final arguments and respondent No.1 would be under obligation to consider the same while rendering the final decision.

11. In that view of the matter, there is no merit in the writ petition. Writ petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-