



{1}

wp 7578.24 R.odt

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

WRIT PETITION NO. 7578 OF 2024

Vasantrao Naik Macchi Vyavsaya
Co-Society, through its Chairman.

Versus

State of Maharashtra and others.

...

Mr. V.D. Hon, Senior Advocate h/f. Mr. R.P. Bhumkar, Advocate for petitioner.

Mr. V.D. Sapkal, Senior Advocate i/b. Mr. N.B. Jadhav and S.R. Nagargoje, Advocate for respondent No.6

Mr. A.S. Shinde, Advocate for respondent Nos. 1 to 5.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 1st AUGUST, 2024.

ORDER :-

1. The petitioner impugns the order dated 14.3.2024 passed by the Honourable Minister of Forest, Agriculture and Fisheries Department, in appeal No. 11 of 2023.

2. Mr. V. D. Hon, learned Senior Advocate appearing for the petitioner submits that the petitioner society is registered on 31st August, 1989. Respondent No.6 society is registered on 13.1.2016. After registration, respondent No.6 filed Appeal No. 3 of 2019 before respondent No.2 - Commissioner of Fisheries at Mumbai, seeking cancellation of registration of the petitioner society, invoking Sections 21 and 21-A of the Maharashtra Cooperative Societies Act 1960 (hereinafter

referred to as MCS Act, for brevity). Respondent No.2, after noting that the application for cancellation of registration is moved after 28 years by third party, declined to exercise powers under Section 21 and 21A of the MCS Act, consequently, dismissed the appeal vide order dated 14.10.2021. Respondent No.6 society, approached the respondent No.1 purportedly in appellate jurisdiction. However, the Honourable Minister exercised revisional powers under Section 154 of the MCS Act and allowed proceeding. Mr. Hon, learned senior advocate would submit that the powers under Section 21A of the MCS Act, can be exercised only after giving notice to the members of the society, however, Honourable Minister completely disregarded procedure prescribed under the Rules. Mr V. D.Hon urges that impugned order is unsustainable and liable to be quashed and set aside.

3. Per contra, Mr. Sapkal, learned senior advocate for respondent No.6 submits that the petitioner society has been registered by adopting fraudulent means. Section 6 of the MCS Act prescribes the conditions for registration of the society. Members of the society must be from different families and residents of the area of operation. However, in the present case, large number of members from one and the same family are shown as members. Some of them are Government servants, but shown to be fishermen. Earlier, application for registration moved by petitioner was rejected by the competent authority observing that society can not be registered on percolation tank. However, later on, in collusion with the concerned Officers, registration of the society has been illegally secured. He would further submit that respondent No.6 society being registered for same area, is entitled to challenge the registration and law laid down by this court in the matter of ***Nandkumar Dakhore vs.***

State of Maharashtra (W.P. No. 8089 of 2021 dated 4.8.2021) has no application in the facts of the present case.

4. Having considered submissions advanced by learned advocates for respective parties and on perusal of the record, apparently, respondent No.6 sought cancellation of registration of petitioner society, which is in existence since 1989. Respondent No.2 was pleased to rejected the appeal mainly on the ground that the application was belatedly filed without explanation for inordinate delay. Secondly, respondent No.6 has no locus-standi in view of the law laid down by this court in the case of *Nandkumar Dakhore (supra)*. Apparently, respondent No.2 passed such order while dealing appeal under Section 21A of the MCS Act. Respondent No.6 had therefore preferred appeal against said order before Honble Minister under Section 152 of the MCS Act. The proceeding shows that Honourable Minister exercised revisional power under Section 154 of MCS Act but ultimately records in operative part that appeal is allowed. Therefore, it is difficult to gather, as to whether the Honourable Minister exercised appellate jurisdiction as sought to be invoked by respondent No.6 or revisional jurisdiction under section 154 of the MCS Act. Pertinently, there is no whisper as regards such discrepancy in the impugned order. Looking to provision under Section 154 of MCS Act revisional power can be exercised only when order challenged is not appealable.

5. Be that as it may, Section 21A of the MCS Act empowers the Registrar to direct de-registration of the society. Respondent No.6 had invoked jurisdiction of respondent No.2 under section 21-A seeking de-registration or cancellation of the society. Section 21A clearly stipulates

that powers can be exercised only after giving an opportunity of hearing to the Chief Promoter, Committee and the members of the society, proposed to be de-registered. The proviso further clarifies that in case the number of members of the society is so large that it is not possible to ascertain correct addresses of all such members, and it is not possible to serve notice to all such members, a public notice of the proceeding of de-registration will have to be given in prescribed manner.

6. In the present case, respondent No.2 declined to exercise his powers under Section 21A for the reasons stated in his order. However, the Honourable Minister in exercise of revisional or appellate powers under Section 152 or 154, records that appeal is allowed. From the observations in the order, it is discernible that the Honourable Minister has purportedly exercised powers of the Registrar under Section 21A and directed de-registration of the society. Pertinently, there are no such stipulations in the operative part of the order. In that contingency, when the Honourable Minister has exercised powers under Section 21A, it was obligatory on his part to issue notices to all the members and if it was not practically possible, cause a public notice to be served upon them. In absence of such notice, exercise of powers under Section 21A cannot be justified. If law prescribes certain powers to be exercised in a particular manner, no authority can exercise such powers without due adherence to the procedure prescribed. Consequently, the impugned order passed by the Honourable Minister deserves to be quashed and set aside and matter needs to be remanded back for afresh consideration, in accordance with law.

7. It is made clear that all points including maintainability of

revision/appeal before the Minister, the locus-standi of respondent No.6 to invoke jurisdiction under Section 21A of the MCS Act, so also, point of delay and laches in invoking such jurisdiction are kept open and it would be for Honourable Minister to consider all the aforesaid aspects, alongwith merits of the matter. Hence the following order :-

O R D E R

- [i] The writ petition is allowed;
- [ii] The impugned order dated 14.3.2024 passed by Honourable Minister in Appeal No. 11 of 2023 is hereby quashed and set aside.
- [iii] The matter is remitted back to the Honourable Minister to afresh decide proceeding in revision/appeal filed by respondent No.6, in accordance with law; particularly, keeping in mind the aforesaid legal and factual issues;
- [iv] Parties shall appear before the Honourable Minister on 19.8.2024.
- [v] The Honourable Minister is requested take up the proceeding from the stage of issuance of notices to all members of petitioner society, in tune with the procedure prescribed under Section 21A of the MCS Act and rules framed thereunder.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-