



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

**WRIT PETITION NO. 868 OF 2023
WITH
WRIT PETITION NO. 869 OF 2023**

Degaon Backwad Class Co. op.
Hou. Soc. Ltd. Thr. Chairman
Mahadeo Pandurang Pawar
Address: Mouje Basveshwarnagar,
Degaon, Lamaan Tanda,
Dist: Solapur.

.....Petitioner

Vs.

1. The State of Maharashtra
Through its Ministry of Co-operation
and Textiles (represented through
its Secretary) Mantralaya, Mumbai.

2. The Divisional Joint Registrar,
C.S., Pune Division, Pune.
Address: Sakhar Sankul,
Shivajinagar, Pune – 411 005

3. The Deputy Registrar, C.S.
Solapur City, Solapur.
Address: 45/2, Shrikhande
Bungalow Near Naval Petrol
Pump, Solapur.

4. The Liquidator,
Degaon Backward Class
Co-operative Housing Society
Ltd., Degaon

Address: Mouje Basveshwarnagar,
Degaon, Lamaan Tanda,
District: Solapur.

.....Respondents

Mr. Prasad P. Kulkarni a/w Mr. V. H. Narvekar for the petitioner
Mr. P. V. Nelson Rajan AGP for respondent nos. 1 to 3

CORAM : GAURI GODSE, J.

DATE : 3rd MAY 2024

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Learned AGP waives service for respondent nos. 1 to 3.
2. Heard learned counsel for the petitioner and learned AGP for respondent nos. 1 to 3. Respondent no. 4 is the Liquidator. Office remark indicates that respondent no. 4 is served, however, none appears for respondent no. 4. Considering the controversy involved in the petitions, the petitions are taken up for final disposal forthwith.
3. Learned counsel for the petitioner submits that Writ Petition No. 869 of 2023 arises out dismissal of a revision application filed to challenge the interim order of liquidation dated 21st October 2015. He submits that Writ Petition No. 868 of 2023 arises out of dismissal of the

revision application filed by the petitioner-society challenging the purported final order of liquidation dated 15th December 2015. Learned counsel for the petitioner submitted that final proceedings of liquidation were never conducted and the petitioner was never served with final order dated 15th December 2015. However, since the petitioner-society was informed that final liquidation order was passed on 15th December 2015, the petitioner had made necessary application before respondent no. 3. He submits that by letter dated 14th March 2022, the petitioner was informed that final order of liquidation was not traceable in the record. However, by way of precaution, separate revision application was filed to challenge the final adjudication purportedly made on 15th December 2015. He submits that both revision applications are dismissed. Hence, the present petitions are filed.

4. Learned counsel for the petitioner submits that it is mandatory to give hearing to the society before any interim order or final order of liquidation is passed. In support of his submissions, he relies upon the Judgment of this Court in the case of **Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd Vs. State of**

Maharashtra and others.¹ He therefore submits that the petitioner was entitled to an opportunity of hearing and also file necessary reply alongwith required documents. Respondent no. 3 ought to have conducted necessary inquiry before passing interim order dated 21st December 2015 under Section 102(1)(c) of The Maharashtra Cooperative Societies Act, 1960 ('MCS Act'). Learned counsel for the petitioner further submits that the final order purportedly passed on 15th December 2015 is not available. Even in the affidavit-in-reply filed in the present petitions, copy of final order dated 15th December 2015 is not produced on record. He therefore submits that impugned orders issued by respondent no. 3 without conducting necessary inquiry, and without giving an opportunity of hearing to the petitioner, are illegally passed by ignoring the legal principles settled in the aforesaid Judgment.

5. Learned AGP submits that since the petitioner-society failed to produce necessary documents, interim order dated 21st October 2015 was confirmed after holding necessary inquiry. He submits that final order of liquidation is passed on 15th December 2015, however, he is

¹ [2004(1) Mh.L.J. 232]

unable to point out whether final adjudication was made as required under Section 102 of the MCS Act.

6. I have considered the submissions. Perused the papers. Perusal of order dated 21st October 2015 indicates that it is an interim order appointing Liquidator in terms of Section 102(1)(c) of the MCS Act. The legal principle with regard to issuing interim order and conducting final proceedings in terms of sub-section (2) of Section 102 of MCS Act is settled by this Court in the decision of **Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd.** This Court has held that though there is no specific provision for granting hearing before the interim order is passed, this Court has interpreted the provision of Section 102. This Court held that the authority was not empowered and justified in passing the impugned ex-parte order without hearing the society. Thus, in view of legal principles settled in the aforesaid decision, the impugned orders could not have been passed without giving an opportunity of hearing to the society.

7. Learned AGP who supports the impugned orders is unable to point out whether show cause notice dated 29th September 2015

referred to in the interim order dated 21st October 2015 was served upon the society. Thus, perusal of record indicates that the interim order dated 21st October 2015 was passed without service of show cause notice upon the society and without giving an opportunity of hearing to the society. So far as the final order purportedly passed on 15th December 2015 is concerned, copy of the order is not placed on record even before this Court. Even copy of show cause notice referred to in the order dated 21st October 2015 is not placed on record. Hence, there is substance in the arguments made by the learned counsel for the petitioner that both impugned orders are in breach of principles of natural justice. In view of the settled legal principles in the decision of **Chandrapur Zilla Sahakari Krushi and Gramin Bahuudeshiya Development Bank Ltd**, both petitions deserve to be allowed. However, respondent no. 3 would be at liberty to issue fresh show cause notice, if found necessary. If any show cause notice is issued, same should be served upon the petitioner-society and date of hearing should be intimated to the society.

8. For the reasons stated above, the petitions are allowed by

passing following order:

ORDER

(i) Writ Petition No. 868 of 2023 is allowed in terms of prayer clause

(a) which reads as under:

“(a) This Hon'ble Court that be pleased to call for the records and proceedings pertaining to Revision Application No. 243 of 2022 from the office of the Respondent No.2 and records and proceedings pertaining to the purported final order of liquidation dated 15.12.2015 from the office of the Respondent No.3 and after going through the same, this Hon'ble Court be pleased to quash and set aside the Impugned Order dated 02.09.2022 passed by the Respondent No. 2 in Revision Application No. 243 of 2022 as also the purported final Order of liquidation dated 15.12.2015 passed by the Respondent No. 3”.

(ii) Writ Petition No. 869 of 2023 is allowed in terms of prayer

clause (a) which reads as under:

“(a) This Hon'ble Court that be pleased to call for the records and proceedings pertaining to Revision Application No. 242 of 2022 from the office of the Respondent No.2 and records and proceedings pertaining to the purported interim order of liquidation dated 21.10.2015 from the office of the

Respondent No.3 and after going through the same, this Hon'ble Court be pleased to quash and set aside the Impugned Order dated 02.09.2022 passed by the Respondent No. 2 in Revision Application No. 242 of 2022 as also the interim order of liquidation dated 21.10.2015 passed by the Respondent No. 3.”

(iii) Respondent no. 3 is at liberty to issue fresh show cause notice to the society, if initiation of proceedings under Section 102 is found necessary. If any such show cause notice is issued, the same shall be served upon the petitioner-society and date of hearing shall be intimated to the petitioner-society.

8. Writ petitions are disposed of in above terms.

[GAURI GODSE, J.]