

AGK

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

WRIT PETITION NO.1210 OF 2020

Rangrao Parasu Mali & Ors.

... Petitioners

V/s.

The Divisional Joint Registrar,
Cooperative Societies, Kolhapur
Division, Kolhapur & Ors.

... Respondents

Mr. Prashant Bhavake for the petitioners.

Mr. S.D. Rayrikar, AGP for respondent Nos.1 & 2/State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 15, 2024

PC.:

1. The petitioners are members of managing committee of a cooperative society against whom the authorities under the Act have passed an order of liquidation in exercise of powers under Section 102(1)(c) (i), (ii) & (iv) of the Maharashtra Cooperative Societies Act, 1960 ("MCS Act" for short).

2. Interim order of liquidation dated 20 February 2017 indicates that order under Section 102 is passed for non-compliance of defects shown by auditor under Section 81 of the MCS Act.

3. Final order of liquidation dated 3 May 2019 also proceeds on the basis that the petitioner/society failed to submit compliance of defects raised under Section 81 and failure to file mandatory returns.

4. The petitioners challenged the order of liquidation before the revisional authorities under Section 154. The revisional authority by order dated 19 November 2019 reiterated the grounds in the interim order of liquidation. It is, therefore, necessary to set out relevant provisions of the MCS Act.

5. Section 102(1) reads thus:

“102. Winding up.—

(1) If the Registrar;

(a) after an inquiry has been held under section 83 or an inspection has been made under section 84 or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of a society which-

(i) Has not commenced working, or

(ii) Has ceased working, or

(iii) Possesses shares or members deposits not exceeding five hundred rupees, or

(iv) Has ceased to comply with any conditions as to registration and management in this Act or the rules or the bye-laws, is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.”

6. On careful consideration of clause (c) of sub-section (1) of Section 102, it appears that the Registrar in exercise of said power

can pass order of liquidation only if the society has not commenced working or has ceased working or has ceased to comply with any conditions as to registration and management of the society or Rules or Bye-laws.

7. The purport of the order passed by the Registrar directing interim or final order of liquidation appears to be non-compliance of rectification of defects in accounts under Section 82.

8. In such situation, the Registrar had other remedies available under the provisions of the Act. However, adopting recourse to Section 102 in the facts of the case appears to be highly disproportionate to the irregularities committed by the society. The non-compliance of Section 82 has its own effect as provided under the Act. Therefore, passing of order of liquidation in the facts of the case was not justified. Hence, following order:

9. The interim order of liquidation dated 20 February 2017 and final order of liquidation dated 3 May 2019 are quashed and set aside.

10. Learned Advocate for the petitioners, on instructions, states that the society has already submitted rectification of audit report and further audit of the society is also conducted. The statement is accepted.

11. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)