



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4079 OF 2019

Arun Gurav and ors

.....Petitioners

Vs.

Gorai Mitratva Co Op Soc Ltd. Thru
Chairman and ors

.....Respondents

Mr. Chandrakant Chavan for the petitioners
Mr. S. B. Shetye for respondent no. 1
Smt. Savita Prabhune AGP for the State

CORAM : GAURI GODSE, J.

DATE : 13th MARCH 2024

P.C.

1. Pursuant to order dated 22nd July 2019, notice for final disposal was issued. Writ petition is taken up for final disposal at admission stage.
2. This petition takes an exception to the order dated 10th April 2018 passed by the learned Minister in revision application filed by respondent no. 2 under section 154 of The Maharashtra Co-operative

Societies Act, 1960 ('MCS Act'). The said revision application was filed for challenging dismissal of an appeal preferred by respondent no. 1. The said appeal was filed by respondent no. 1 under section 152 of the MCS Act for challenging the order passed by the Deputy Director, Cooperative Societies, Maharashtra Housing and Area Development Authority ('MHADA') passed under section 77A of the MCS Act for appointing administrator.

3. The order appointing administrator was passed in the proceedings initiated on a complaint filed by the petitioners claiming to be members of the respondent no. 1-society. The Deputy Registrar passed an order for appointing the administrator on the ground that there were two parallel managing committee members claiming to be elected body of respondent no. 1-society. The Deputy Registrar recorded that there were original 13 members of the society and after adding new members, there were total 18 members. However, only added members had claimed to have conducted general body meeting and were claiming to have been elected as managing committee members. The Deputy Registrar further also observed that both

managing committees claiming to have been elected were using separate letterheads, rubber stamps and were making correspondence independently. It is also observed in the order that there were criminal complaints filed by the members regarding the election of the managing committee. Hence, considering the dispute between the members and two parallel committee members claiming to be elected body, the Deputy Registrar Cooperative Societies thought it fit to appoint administrator for taking charge for a period of six months or till new committee was appointed in accordance with law.

4. Perusal of the record indicates that the said order appointing administrator was challenged by respondent no. 1 society by filing appeal under section 152 of the MCS Act before the Divisional Joint Registrar. The said appeal was dismissed on 26th July 2017. It appears that dismissal of the appeal filed by the society was challenged by respondent no. 2 claiming to be chairman of the society by filing revision application under section 154 of the MCS Act before the State Government. By the impugned order, the said revision application is

allowed and the order appointing administrator is quashed and set aside. Learned Minister has essentially set aside the order appointing administrator on the ground that the provisions of the original lease deed were not taken into consideration by the Deputy Registrar before passing the order. It is observed by the learned Minister that the validity of the membership was required to be taken into consideration before passing any order appointing administrator. By the impugned order, the dispute raised regarding membership of the petitioners was discussed and on the ground of validity of the membership of the petitioners, the order appointing administrator has been set aside.

5. Learned counsel for the petitioners submitted that petitioners have been validly admitted as members of the society and order of allotment of membership is also validly issued. He further submitted that there was no dispute regarding membership of the petitioners. He further submitted that appeal filed by respondent no. 1 was dismissed by the Divisional Joint Registrar and the order appointing administrator was confirmed. He further submitted that respondent no. 1-society never chose to challenge the said dismissal. However, respondent no.

2 in his individual capacity has filed the revision application. He submitted that there was no resolution passed by the general body for challenging order for appointment of administrator. He thus submitted that the issue, if any, about the validity of membership of the petitioners could not have been a ground for setting aside the order appointing the administrator. He submitted that managing committee which was formed at the time of formation of the society continued to be in-charge of the society without following the procedure for electing a fresh managing committee. He thus submitted that the impugned order is required to be set aside and the order appointing administrator needs to be confirmed.

6. Learned counsel appearing for respondent nos. 1 and 2 submits that he has filed affidavit-in-reply on behalf of respondent no. 1-society as well as respondent no. 2. He submits that respondent nos. 1 and 2 have no objection regarding appointment of administrator and holding election for formation of the new managing committee. He further submits that there is serious dispute so far as validity of the membership of the petitioner is concerned. In the affidavit-in-reply, he

has relied upon certain documents claimed to have been submitted by the petitioners before respondent no. 2 for admitting them as members. He thus submits that even if administrator takes charge and new managing committee is to be elected, the issue of validity of membership is required to be decided by the administrator.

7. I have considered the submissions made by both parties. I have perused the record. The order appointing administrator passed by the Deputy Registrar indicates that two set of members are claiming to have been elected as managing committee of the society. It is not in dispute that the committee which was formed at the time of formation of the society, continued with the charge of the society and inspite of complaint, no fresh elections were conducted. Considering the reasons recorded by the Deputy Registrar for appointing administrator, I do not see any reason why the existing committee should continue holding the charge after completion of the term. There is no error or illegality in the order appointing administrator. The said order appears to have been challenged by the respondent no. 1 society, however, the appeal was dismissed by the Divisional Joint Registrar.

8. Perusal of the record indicates that respondent no. 2 in his individual capacity as chairman of the society filed the revision application before the State Government. By the impugned order, learned Minister has discussed the issue of validity of membership of the petitioners and has set aside the order appointing administrator. Learned Minister has completely ignored that though the managing committee had completed its term, they had not taken any steps for formation of new committee. The fact that once the tenure of the managing committee is completed, the managing committee has no right to continue to hold the charge and it is mandatory to take steps for formation of the new society, is completely ignored while setting aside the order appointing administrator. The reasons recorded in the impugned order indicates that only on the ground of validity of membership of the petitioners, the order appointing administrator has been set aside. Once it is not in dispute that the original managing committee had completed its tenure and two set of members were claiming to have been elected as managing committee, it was necessary that the administrator had taken charge of the society and

conducted the elections for formation of a valid committee. So far as objection regarding validity of the membership of the petitioners is concerned, the same was not subject matter before the learned Minister. Once the administrator takes charge, he has to follow the procedure under the MCS Act and the Rules framed under it for formation of the new managing committee. Hence, the reasons recorded by the learned Minister for setting aside the order appointing administrator is illegal and cannot be sustained.

9. Considering the order passed by the Deputy Registrar for appointing administrator, the reasons recorded by the Deputy Registrar are valid and I do not see any error or illegality for setting aside the same by the revisional authority.

10. So far as the new documents produced on behalf of respondent nos. 1 and 2 in their affidavit-in-reply is concerned, same is also not the subject matter of the present petition. Hence, I do not find it necessary to examine the said documents. It appears that there is also a serious dispute on whether respondent no. 2 was authorized to file revision application before the State Government claiming to be

chairman of the society. Perusal of the record as well as affidavit-in-reply does not indicate that there was any authorization placed on record by respondent no. 2 for representing the society and/or any authorization for filing the revision application. Be that as it may, the fact that two set of members are claiming to be elected managing committee of the society, it is necessary that administrator takes charge forthwith.

11. Hence, for the reasons recorded above, petition is allowed by passing following order:

ORDER

I. The impugned order dated 10th April 2018 passed by the learned Minister in Revision Application No. 773 of 2017 is quashed and set aside and the said revision application is rejected.

II. The order dated 6th October 2015 passed by the Deputy Registrar, Cooperative Societies, MHADA (Exhibit 'B') passed under section 77A of the MCS Act is confirmed.

III. The concerned Deputy Registrar Cooperative

Societies, MHADA is directed to forthwith appoint a fit person as administrator in terms of order dated 6th October 2015 for taking charge of the society and for taking further steps for formation of the new managing committee of respondent no. 1-society, in accordance with law.

10. Writ petition is allowed in above terms.

[GAURI GODSE, J.]