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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8449 OF 2023**

Yash Co-op Hsg Society,
Plot No. 649, Veer Savarkar Road, Dadar(W),
Mumbai – 400 028, through its Secretary, Mr.
Anil M. Gupte, Flat No. 6, Yash Co-op.
Housing Society, Plot No. 649, Veer Savarkar
Road, Dadar(W), Mumbai – 400 028. ... Petitioner

vs.

1. State of Maharashtra, through its Principal
Secretary, Department of Co-operation,
Marketing and Textiles, Maharashtra,
Mantralaya, Mumbai.
2. Deputy Registrar, Cooperative Societies,
G/N Division, Mumbai, 6th Floor, Malhotra
House, Opposite GPO, Fort, Mumbai – 400
001.
3. Vishal Nimbalkar, Advocate and Liquidator,
Appointed for Petitioner-Society, Having his
office at 6th Floor, Malhotra House, Opposite
GPO, Fort, Mumbai – 400 001.
4. Canara Bank, Mondesire Building, Ranade
Road, Cadell Road Junction, Dadar West,
Mumbai – 400 028. ... Respondents

Mr. Ajay Basutkar with Jaydeep Deo, for Petitioner.

Mr. A.P. Vanarse, AGP for Respondent Nos. 1 and 2-State.

CORAM : GAURI GODSE, J.

DATED : 16th JANUARY, 2024

ORAL JUDGMENT :-

1. Heard.
2. Rule. Learned AGP waives service for respondent nos. 1 and 2.
3. Rule made returnable forthwith. By consent taken up for final disposal.
4. This petition takes exception to the orders dated 22nd November 2017, 7th June 2018, 20th January 2021 and 28th September 2022 passed by the Deputy Registrar, Cooperative Societies, G/N Division, Mumbai - respondent no.2. Order dated 22nd November 2017 is passed under section 102 of Maharashtra Cooperative Societies Act, 1960 ('Societies Act') and by order dated 7th June 2018 interim order was passed appointing Liquidator. By orders dated 20th January 2021 and 28th September 2022, final directions are issued appointing Liquidator. The main grievance of the petitioner in the petition is that all the aforesaid orders were passed without giving any notice to the petitioner and without giving an opportunity of being heard.
5. In response to the aforesaid submissions, there is an affidavit-

in-reply filed on behalf of the respondent no.2. Perusal of the affidavit-in-reply shows that it is not disputed that the impugned order was passed without service of notice to the petitioner and without hearing the petitioner. In paragraph 5 of the affidavit-in-reply, it is stated that there was a mismatch in the actual address of the petitioner society and the address mentioned in the order. Hence, the order was not conveyed to the petitioner. A perusal of the affidavit-in-reply indicates that there is a substance in the grievance made on behalf of the petitioner that the orders impugned in the petition were passed without any notice and without hearing the petitioner.

6. Respondent no.3, is the Liquidator who is appointed under the impugned orders. Respondent no.4 is made party respondent as the bank account of the petitioner's society is frozen in view of the impugned orders. Considering the grievance made in the petition and the response of respondent no.2, the petition deserves to be disposed of and it is not necessary to hear the respondent nos.3 and 4 as the grievance of the petitioner is about the orders passed by respondent no.2 without giving notice to the petitioner.

7. Learned counsel for the petitioner points out that in a similar situated Writ Petition No. 1986 of 2023 concerning a housing

society similar order was passed and this court vide order dated 6th March 2023 allowed the petition and directed respondent no.2 to give notice to the society for initiating winding up proceedings if found necessary.

8. Learned counsel for the petitioner relies upon the provisions of section 102 of the Societies Act. Learned counsel for the petitioner submits that sub-section (1) of section 102 of the Societies Act requires passing of an interim order and sub-section (2) of section 102 of the Societies Act, mandates that the interim order is to be served upon the society and before passing any final order an opportunity of submitting explanation is required to be given to the society and after an opportunity of hearing, if necessary a final order is to be passed either confirming or vacating the interim order.

9. Learned counsel for the petitioner states that even otherwise the petitioner society has submitted audit reports of five financial years and has submitted the same before respondent no.2 on 18th November 2022 and requested to issue directions to de-freeze the bank account of the petitioner. He submits that the aforesaid facts are admitted by respondent no. 2 in paragraph 7 of his affidavit-in-reply.

10. Perusal of the impugned orders, does not indicate that the procedure as prescribed under section 102 of the Societies Act has been followed by respondent no.2 before passing the impugned orders. In view of the grievance made on behalf of the petitioner that the orders impugned were passed without any notice to the petitioner and considering the response of respondent no.2, the petition deserves to be disposed of by setting aside the impugned orders and directing respondent no.2 to initiate proper proceedings as contemplated under section 102 of the Societies Act.

11. Hence, the following order is passed:

I) Impugned orders dated 22nd November 2017, 7th June 2018, 20th January 2021, and 28th September 2022 are quashed and set aside.

II) Respondent no.2 shall give prior notice to the petitioner and after obtaining proper acknowledgment of service of notice may initiate winding up proceedings, if found necessary after due compliance under section 102 of the Maharashtra Cooperative Societies Act.

III) Respondent no.2 to issue necessary directions on the

request made by the petitioner on 18th November 2022 for issuing directions to de-freeze the bank account of the petitioner.

12. Writ petition is allowed in the above terms.

(GAURI GODSE, J.)