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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13101 OF 2023**

Allabaksh Faku Sayyad

... Petitioner

vs.

The State of Maharashtra through Principal
Secretary and Ors

... Respondents

Mr. D.V. Sutar a/w. Mr. Kiran G. Kulkarni, Mr. Deepak Jain, Ms.
Anjali Shaw, for Petitioner.

Mr. Saurav N. Katkar a/w. Shantanu S. Raktate & Amar D. Parsekar
for Respondent Nos. 5 to 7.

Mr. P.V. Nelson Rajan, AGP for the State.

CORAM: GAURI GODSE, J.

DATED : 10th APRIL 2024

P.C. :-

1. This petition takes an exception to the order passed by the Divisional Joint Registrar, Cooperative Societies, dismissing the petitioner's revision application. The revision application was filed for challenging the order passed by the learned Assistant Registrar, Cooperative Societies, passed under Rule 58 of the Maharashtra Cooperative Societies Rules ("MCS Rules") read with section 73CA of the Maharashtra Cooperative Societies Act 1960 ('MCS Act').

2. The petitioner is a member of respondent no. 4-society, and was elected as a Chairman. On a complaint filed by Respondent no. 3, the learned Assistant Registrar, after scrutinizing the documents produced before him, passed an order declaring that the petitioner is disqualified from being a member of the society in view of the disqualification incurred by him under Section 73CA of the MCS Act. The said disqualification is on the ground that before the date of election petitioner's third child was born after 7th September 2001, i.e., the date when the amendment to section 73CA was made effective.

3. On receipt of the complaint, the Assistant Registrar issued notice of hearing to the petitioner. In response to the notice, the petitioner raised grounds of objection, stating that similar objection were raised at the time of scrutiny of nomination papers, and the objection was rejected. Hence, the Assistant Registrar had no jurisdiction to decide the issue of disqualification, and the complaint filed by respondent no.3 was barred by the principle of *res judicata*.

4. The Assistant Registrar has scrutinised the documents showing the date of birth of the third child of the petitioner. The document indicates that the third child was born on 6th April 2003. Learned Assistant Registrar has recorded that there was no counter

evidence produced by the petitioner. Hence, the Assistant Registrar passed an order declaring that the petitioner is disqualified from being a member of the committee of the society in view of Section 73 CA(1)(f)(vii) of the MCS Act.

5. Being aggrieved by the said order, the petitioner preferred a revision application before the Divisional Joint Registrar. The said revision application is rejected on the same grounds. Hence, this petition.

6. Learned counsel for the petitioner submitted that once the objections on the same ground were rejected at the time of scrutiny of nomination papers, the Assistant Registrar had no jurisdiction to declare that the petitioner had incurred disqualification. He submitted that the rejection of the objection raised at the time of scrutiny of the nomination papers was not challenged by respondent no.3. He submits that the disqualification if any, of the petitioner could not have been raised by filing a complaint after the petitioner was declared elected as Chairman of the society. He submits that once elections were declared, the proper remedy would have been to file a dispute under Section 91 of the MCS Act, and the Assistant Registrar could not have declared the petitioner disqualified. Learned counsel for the petitioner in support of his submissions

relied upon the following judgments;

1. *Sachin Nester Pereira V/s The State of Maharashtra and Ors*¹
2. *Gandhinglaj Taluka Sahakari Sakhar Karkhana Ltd V/s. Collector of Kolhapur & Anr*².
3. *Pandurang Laxman Kadam & Ors V/s. State of Maharashtra & Ors*³
4. *Gopal Kashinath Pawar V/s State of Maharashtra and Ors*.⁴

7. Learned counsel for respondent no.3 submitted that once there is no dispute that the third child was born after 7th September 2001, i.e. the relevant amended clause being made effective, there was automatic disqualification of the petitioner, and hence, he was not entitled to continue as a member of the society. He submits that the petitioner has not disputed that the third child was born after the relevant date. He thus submits that once there is no dispute that the third child was born after the relevant date, the petitioner was disqualified to be a member of the committee. Hence, there is no illegality in the orders impugned in the present petition warranting any interference under Article 227 of the Constitution of India.

8. I have considered the submissions. Perused the papers.

1 WPSt No. 30663 of 2017, dated 9th November 2017

2 2005(6) Bom. C.R. 160.

3 2015 SCC Online Bom 5840.

4 WP No. 2703/2022, dated 23.06.2022.

Learned Assistant Registrar, after scrutinizing the documents in support of the date of birth of the third child of the petitioner has recorded a finding that the petitioner is disqualified. A perusal of the reply filed before the Assistant Registrar does not indicate that the petitioner had disputed that his third child was born after 7th September 2001. Even in the present petition, it is not the case of the petitioner that the third child was not born after the relevant date. In view of the aforesaid undisputed facts, no fault can be found in the impugned orders.

9. Section 73CA of the MCS Act provides for disqualification of committee and its members. Section 73CA(1)(vii) of the MCS Act says that no person shall be eligible for being appointed, nominated, elected, co-opted or for being a member of a committee if he has more than two children. The said sub-clause (vii) is made effective from 7th September 2001. The provisos of sub-clause(vii) provides for exceptions. It is not the petitioner's case that he falls under any of the exceptions. There is no dispute raised on behalf of the petitioner regarding date of birth of the third child.

10. A perusal of the reasons recorded by both the authorities indicates that based on documentary proof, the authorities had come to a conclusion that the petitioner has incurred disqualification

under section 73CA(1)(vii) of the MCS Act. Hence, an inquiry was conducted as contemplated under Rule 58 of the MCS Rules, after giving an opportunity of being heard to the petitioner.

11. There is no substance in the argument raised on behalf of the petitioner that the Assistant Registrar had no authority to pass such an order after the petitioner was elected and more particularly because the objection on the same ground was rejected raised at the time of scrutiny of the nomination papers. Once there is a disqualification under the said section, the petitioner is disentitled from being a committee member of the society. Even otherwise, there is no dispute regarding the date of birth of the third child. Given the undisputed facts of the present case, the petitioner was ineligible to be a committee member. Hence, none of the judgments relied upon by the learned counsel for the petitioner are of any assistance to the petitioner.

12. The impugned Orders have no manifest error or illegality warranting invocation of powers under Article 227 of the Constitution of India. The Petition is devoid of any merits. For the reasons recorded above, the petition is dismissed.

13. At this stage, learned counsel for the petitioner requests for an extension of the order of stay for four weeks. He submits that the

petitioner had filed a revision before the learned Minister. However, the same was withdrawn as it was not maintainable. He submits that the learned Minister had granted a stay to the impugned orders. The same was continued by this Court from time to time. Since, there is already an order of stay operating till date the same shall continue for a period of four weeks from the date of uploading of this Order.

(GAURI GODSE, J.)