

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18673 OF 2024.

Bharatkumar Unercat and Others.

...Petitioners.

Versus

The Asst Registrar Of Cooperative Societies (CIDCO)
and Others.

...Respondents.

Mr. Aadil Parsurampuria i/b Mr. Mehul Rathod for the Petitioner.
Smt. V. R. Raje, AGP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 20, 2024.

P. C. :

1. By this Petition, the challenge is to the order dated 15th October, 2024 passed by the Assistant Registrar in exercise of powers under Section 77A(b-1) of the Maharashtra Co-operative Societies Act, 1960 [for short, "***the MCS Act***"] appointing Respondent No.3 as the Authorised Officer under Section 77A(4) of the MCS Act for the reason that despite the expiry of term of the managing committee of Crown Imperial Tower Co-operative Housing Society Limited of which the Petitioners are the members, no steps were taken for conducting elections in accordance with the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014.

2. Learned counsel appearing for the Petitioner would submit that the petitioners before this Court are 46 members out of 75 members

and except for Respondent No.4, other members support the cause of the petitioner. He would submit that the Assistant Registrar exceeded its jurisdiction in passing the order under Section 77A(b-1) without complying with first proviso to Section 77A of MCS Act. He submits that without giving an opportunity of raising any objection to the exercise of powers under Section 77A, the Authorised Officer has been appointed under sub-section (4) of Section 77A. He would further submit that the Authorised Officer by communication dated 4th November, 2024 informed the office bearers of Crown Imperial Co-Op. Housing Society Limited that he has addressed communications to the Bank to freeze the Society accounts, which the Authorized Officer did not have any power to do. He would further submit that the order of 15th October, 2024 came to be passed at the instance of Respondent No.4, despite the reply to the show-cause notice and the election program being published by Society on 13th October, 2024.

3. *Prima facie* from the impugned order dated 15th October, 2024, it does not appear that the first proviso to Section 77A was complied by the Assistant Registrar before appointing the Authorised Officer under sub-section (4) of Section 77A. The reason why the powers have been exercised appears to be that the elections were not conducted despite the expiry of the term of the managing committee. For the exercise of powers under Section 77A, the Registrar has to arrive at satisfaction

that the committee has ceased to function and vacuum is created in the Management.

4. *Prima facie* it appears that there was a provisional committee which was managing the affairs of the Society and the appropriate course would have been to appoint the Authorised Officer for the purpose of conducting the election. The show-cause notice was issued on 9th August, 2024 and on 13th October, 2024, the election program was published by the Society realizing the gravity of the matter. Within a period of two days, Respondent No.1 has passed the order under Section 77A(b-1) and has appointed the Authorised Officer. The Authorised Officer by communication dated 4th November, 2024 has frozen the Society's accounts and *prima facie* there is no statutory provision demonstrated authorising the Authorised Officer under Section 77A(4) to freeze the bank accounts. Freezing the bank account without any valid reason would result in all the Society's operation coming to a standstill. From the material on record, there was no warrant to take such drastic step particularly, considering the Authorised Officer is not shown to have any powers under the MCS Act to freeze the bank account of the Society.

5. It is evident from the impugned order that the Authorised Officer was directed to takeover the management of the Society and to conduct the elections and thereafter, handover the charge to the new

committee. The freezing of the bank account is clearly in excess of directions which were issued by the impugned order.

6. In light of the above, case for grant of ad-interim relief is made. Ad-interim relief in terms of prayer clause 'b' is granted which reads thus:

b. That after examining the legality, validity and propriety thereof, this Hon'ble Court be pleased to exercise its Supervisory Jurisdiction u/A.227 of the Constitution of India r/w. its inherent powers vested in this Hon'ble Court u/s.151 of the Code of Civil Procedure, 1908, and quash and set aside the Impugned Letter dated 04.11.2024 issued by the Respondent No.3 Authorized Officer, as well as any and all communications and Orders issued by the Respondent No.3 to any person, entity or bank in furtherance of his appointment as the Authorized Officer of the Petitioners' Crown Imperial Cooperative Housing Society Limited.

7. Issue notice to Respondents returnable on **17th January, 2025**. In addition to Court notice, Advocate for the Petitioner to serve the Respondents by private notice by all possible modes of service and file affidavit of service before the next date.

8. Learned AGP waives for Respondent Nos.1 and 2.

9. It is made clear that there is no embargo on the Society to conduct election in accordance with the election program.

[Sharmila U. Deshmukh, J.]