IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18799 OF 2024.

Sayyad Tayanoor Yakub and Others. ...Petitioners.

Versus

The Divisional Joint Registrar, Konkan Division and Others. ...Respondents.

Mr. Sandesh Patil i/b Mr. Prithviraj Gole for the Petitioner.
Mr. Viraj Parikh i/b Mr. Dharmesh Jain for Respondent Nos.3 and 4.
Mr. Bapusaheb Dahiphale, AGP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 16, 2024.

P. C. :

1. By this petition, the challenge is to the order dated 25th September, 2024 passed by Respondent No.2 and judgment and order dated 5th November, 2024 passed by Respondent No.1.

2. The facts of the case are that in March 2022, the Corporation has demolished the society building and Administrator came to be appointed on 31st May, 2022. The Administrative Board appointed some of the Respondents as committee members for the year 2022-2023. On 17th September, 2023, the petitioners were elected as committee members of the said society and on 4th October, 2023, the petitioners took charge of the administrative affairs of the Society and thereafter, a meeting was held on 9th October, 2023.

3. The complaint was filed on 8th May, 2024 under Section 75 of the

Maharashtra Co-operative Societies Act, 1960 [for short, ***"MCS Act"***] by the Respondents alleging non-compliance in respect of financial year 2022-23 and the petitioners came to be disqualified against which the revision preferred was also dismissed.

4. Mr. Patil, learned counsel for Petitioner would submit that the non-compliance alleged for the financial year 2022-23 was in respect of the requirement under Section 75 of the MCS Act to get the book of accounts audited within a period of four months after the close of the financial year and the Annual General Meeting to be held within a period of 6 months from the end of the financial year. He submits that on 17th September, 2023, the petitioners were elected as committee members and therefore, non-holding of the AGM or non-audit of the accounts for the year 2022-23 could not result in disqualification of Petitioner. He would further submit that though the petitioners were appointed on 17th September, 2023, the charge was taken on 4th October, 2023 and the meeting was held on 9th October, 2023.

5. He submits that the said facts were placed before the Revisional Authority but were not considered. He submits that infact the Administrator had appointed Respondent Nos.3 and 4 along with one Shri. S. C. Kanojiya as the committee member and it was their responsibility and not the Petitioners.

6. *Per contra* Mr. Parikh, learned counsel appearing for the private

Respondents would submit that it is the petitioner's own resignation which led to the Administrator being appointed to the Society. He submits that the duties have to be carried out as per the statutory provisions and even if the committee is appointed in September 2023, there has to be a compliance of the statutory obligations. He would seek time to file Affidavit-in-reply and oppose grant of ad-interim relief.

7. It is undisputed that the petitioners have been disqualified for non-compliance of Section 75 of the MCS Act which provides for books of accounts to be audited within a period of four months and for holding of the Annual General Body Meeting within a period of six months from the close of the financial year. The allegation admittedly is in respect of financial year 2022-23 and the period of four months would expire in the month of July 2023 and the period of six months would expire in the month of September 2023. Considering that the petitioners came to be elected on 17th September, 2023 and took charge of the administrative affairs of the Society on 4th October, 2023, the Petitioners could not be imposed with the obligation which was required to be complied with prior to their appointment. The allegation is not in respect of financial year 2023-24, in which case, the petitioners could have been held responsible under Section 75 of the MCS Act. As the complaint was in respect of the financial year 2022-23, the appointment of the petitioner being post-expiry of the period prescribed under Section 75 *prima facie* the petitioners could not have been disqualified. Perusal of the provisions of Section 75(5) of the MCS Act indicates that a discretion is vested in the Registrar before the order of disqualification is passed, by use of the expression “may”. Having been vested with discretional power, it was incumbent upon the Registrar to examine the defence put forth by the petitioner and consider whether to exercise discretion in favor of Petitioner in view of the admitted date of appointment of Petitioners.

8. Perusal of the impugned order does not *prima facie* indicate any consideration of the factual position as regards the impossibility of compliance of Section 75 by reason of subsequent appointment on 17th September, 2023. *Prima facie* case for grant of ad-interim relief is made out. Ad-interim relief in terms of prayer clause ‘b’ is granted which reads thus:

> *b) Pending the hearing and final disposal of the present writ petition, the effect, execution, implementation and operation of the aforesaid the judgment and order dated 25/09/2024 passed by the Respondent No.2 and the judgment and order dated 05/11/2024 passed by the Respondent No.1 be stayed/suspended.*

9. List the petition for further consideration on **7th January, 2025.** Before the next date, reply to be filed with the advance copy to the other side.

10. Leave to amend the annex copies of the legible documents to the petition. Amendment to be carried out before the next date.

[Sharmila U. Deshmukh, J.]