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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14775 OF 2023
WITH
WRIT PETITION NO.14799 OF 2023

Bhagwanrao Jadhav Vikas Seva
Sanstha Limited, through it's
authorized representative ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

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GANESH
KULKARNI

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Mr. Kishor Patil with Mr. Rishikesh Avhad i/by Mr.
Akshay R. Kapadia for the petitioner.

Ms. Dhruvi Kapadia, AGP for respondent Nos.1 to 3-
State.

Mr. Vaibhav R. Gaikwad for respondent Nos.4 to 7 and
9 to 18.

CORAM : AMIT BORKAR, J.

DATED : MARCH 18, 2025

P.C.:

A) Writ Petition No.14775 of 2023:

1. The present writ petition arises from a dispute concerning the grant of membership in a Multi-Purpose Cooperative Society. The controversy emanates from the refusal of the petitioner-Society to admit respondent Nos.4 to 18 as members on the ground of non-compliance with a mandatory condition prescribed under the bye-laws of the Society, which stipulates that a proposed member must not be a defaulter of any other cooperative society.

Initially, the communication issued by the petitioner-Society, rejecting the membership applications of respondent Nos.4 to 18, explicitly mentioned the reasons for such rejection. Aggrieved by this refusal, respondent Nos.4 to 18 preferred an appeal under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960 ("MCS Act") before the Registrar, contending that the rejection was arbitrary and contrary to law. The Registrar, upon adjudication, allowed the appeal and directed the petitioner-Society to grant membership to respondent Nos.4 to 18. Dissatisfied with the said decision, the petitioner-Society preferred a revision before the Revisional Authority, which came to be dismissed. Hence, being aggrieved by the orders passed by the Registrar and the Revisional Authority, the petitioner-Society has approached this Court under Article 226 of the Constitution of India.

2. Mr. Patil, learned counsel appearing on behalf of the petitioner-Society, has submitted that the petitioner-Society has no objection to enrolling respondent Nos.4 to 18 as members, provided they fulfill the eligibility conditions as per the bye-laws of the Society and the statutory requirements under the Maharashtra Cooperative Societies Rules, 1961 ("MCS Rules"). He submits that if respondent Nos.4 to 18 have cleared their outstanding dues payable to any other cooperative society and do not fall within the definition of "defaulter" as envisaged under the relevant bye-law, the petitioner-Society shall process their applications in accordance with Rules 19 and 20 of the MCS Rules. He further submits that any application filed by respondent Nos.4 to 18 seeking membership shall be duly considered, subject to their compliance

with the prescribed conditions.

3. Per contra, Mr. Gaikwad, learned counsel appearing for respondent Nos.4 to 18, has stated that he is not in a position to confirm whether respondent Nos.4 to 18 have cleared their outstanding dues of any other cooperative society. However, he submits that this aspect does not preclude this Court from passing appropriate orders, especially in light of the stand taken by the petitioner-Society that it is willing to grant membership upon verification of compliance with the eligibility criteria, particularly the clearance of outstanding dues. He further contends that respondent Nos.4 to 18 are ready and willing to furnish the necessary certificates from the concerned cooperative society to establish that they are not defaulters.

4. Upon considering the submissions advanced on behalf of the parties and taking into account the assurances given by the petitioner-Society, this Court finds that the interests of justice would be served by directing the parties to act in accordance with the legal framework governing cooperative societies. It is evident that respondent Nos.4 to 18 would be entitled to membership upon demonstrating compliance with the eligibility criteria prescribed under the bye-laws of the petitioner-Society and the statutory provisions under the MCS Rules. Since the two possible contingencies, i.e., either respondent Nos.4 to 18 having cleared their dues or being required to clear them before membership is granted, are duly addressed, the following order is passed:

i) In the event respondent Nos.4 to 18 have not cleared their dues payable to any other cooperative society, they shall do so forthwith and obtain a certificate from such cooperative society certifying that they are not defaulters.

ii) If respondent Nos.4 to 18 have already cleared their outstanding dues, they shall submit a "No Dues Certificate" from the concerned cooperative society to the petitioner-Society. Upon verification of the said certificate and satisfaction regarding compliance with Rules 19 and 20 of the MCS Rules, the petitioner-Society shall proceed to enroll respondent Nos.4 to 18 as its members within a period of four weeks from the date of receipt of the application along with the requisite documents.

5. With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

B) Writ Petition No.14799 of 2023:

1. The present writ petition emanates from the order passed by the Revisional Authority in exercise of its jurisdiction under the Maharashtra Cooperative Societies Act, 1960 (for short, "the MCS Act"), whereby the revision preferred by the petitioner-Society, assailing the action initiated under Sections 78A and 79(2) of the said Act, has been partly allowed. The challenge in the present proceedings is confined to the limited extent of the Revisional Authority permitting continuation of the action under Section 79(2) of the MCS Act, despite the findings recorded in respect of the order under Section 78 of the Act.

2. Upon perusal of the impugned order, it emerges that the Revisional Authority, after due consideration of the factual matrix and legal submissions, has proceeded to set aside the order passed under Section 78 of the MCS Act. However, in the same breath, the Revisional Authority has permitted the Registrar to proceed further with the action under Section 79(2) of the said Act. Such an approach, in my considered opinion, is legally unsustainable, as it results in a dichotomous situation where the substratum of the proceedings under Section 78 has been annulled, yet the proceedings under Section 79(2) have been allowed to continue, leading to an incongruous position.

3. It is pertinent to note that this Court, in Writ Petition No. 14775 of 2023, has already adjudicated upon the issue concerning the directive issued to the petitioner-Society for granting membership to respondent Nos. 4 to 18. By the said judgment, this Court has set aside the order directing the petitioner-Society to grant membership to respondent Nos. 4 to 18, subject to an assurance extended on behalf of the petitioner-Society that, should respondent Nos. 4 to 18 be found eligible and subject to their clearing the outstanding dues payable to the other cooperative society, they would be granted membership within four weeks from the date of their application. In view of such a categorical pronouncement by this Court, it would be manifestly unjust to permit action under Section 79(2) of the MCS Act to be continued on the ground of alleged non-compliance with the Registrar's order. The very foundation of the alleged non-compliance stands eroded in light of the said judgment, and therefore, any further

proceedings under Section 79(2) would be an exercise in futility. Consequently, the impugned action under Section 79(2) of the MCS Act deserves to be quashed and set aside.

4. In light of the foregoing discussion, the writ petition is allowed. Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

(AMIT BORKAR, J.)