
(2016) 09 BOM CK 0175
In the Bombay High Court
Case No : Writ Petition No. 6102 of 2015

Anant Gunvantrao Sable

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 73CA(1)(vi)

Citation : (2016) 6 ALLMR 801 : (2017) 2 MhLJ 766

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : J.B. Kasat, Advocate, for the Respondent No. 4; N.A. Gaikwad, Advocate, for the Petitioner; K.L. Dharmadhikari, Asstt. Govt. Pleader, for the Respondent Nos. 1 to 3; A.M. Ghare, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J. - In view notice for final disposal, the learned counsel for the parties have been heard at length by issuing Rule and making the same returnable forthwith.

2. The question that arises for consideration in this Writ Petition is :

Whether the petitioner, by virtue of having let out premises jointly owned by him to the respondent no.4 ? Co-operative Bank, can be said to be disqualified to hold the post of Director under the provisions of Section 73CA (1) (vi) of the Maharashtra Co-operative Societies Act, 1960 [for short, referred as "the said Act"] ?

The aforesaid question arises in view of the following facts:-

3. The petitioner has been elected as a member of the Managing Committee of the respondent no. 4 ? the Amravati District Central Co-operative Bank Ltd. It is the case of the respondent no. 5 that on 6th March, 2010, the Managing Committee of the said Bank passed a resolution by which it was resolved to shift

the Surji Branch of the Bank to Anjangaon. The Branch was shifted to a building owned by the petitioner and his brother at Anjangaon. According to the respondent no. 5, the petitioner had participated in the said meeting wherein the resolution was passed and as the Branch was shifted in the building jointly owned by the petitioner, he stood disqualified under the provisions of Section 73CA (1) (vi) of the said Act. On that basis, the respondent no. 5 on 28th July, 2014 filed an application before the Divisional Joint Registrar, Co-operative Societies, seeking disqualification of the petitioner.

4. The petitioner filed his reply and opposed the aforesaid application. It was his case that though the petitioner and his brother were co-owners of the property in question, by virtue of a partition between them, the ground floor of said premises stood in the name of his brother and it was he who had entered into the lease agreement with the Bank. The rent was being paid to the petitioner's brother and hence the petitioner could not be held to be so disqualified.

5. The District Deputy Registrar, Co-operative Societies, directed the authorised Enquiry Officer and Asstt. Registrar to submit a report in the matter. Such report came to be submitted on 13th February, 2015, observing that by passing a resolution for shifting of the branch, it could not be said that the petitioner had attracted disqualification under the provisions of Section 73CA (1) (vi) of the said Act. The Divisional Joint Registrar accepted the aforesaid report and by order dated 11th May, 2015, dismissed the application for disqualification.

6. The respondent no. 5, being aggrieved, filed a Revision Petition under Section 154 of the said Act. The Hon'ble Minister for Cooperation, Marketing & Textiles, by order dated 20th October, 2015, came to the conclusion that as the petitioner had interest in the property in which the Branch of the Bank was shifted, he was liable to be disqualified from holding the post of Director. By the impugned order, the petitioner was held disqualified to continue as a Director of the Bank under the provisions of Section 73CA (1) (vi) of the said Act. As a consequence thereof, the Divisional Joint Registrar passed an order of disqualification dated 31st October, 2015. Being aggrieved, the aforesaid order is assailed in the present Writ Petition.

7. Shri N.A. Gaikwad, learned counsel for the petitioner, submitted that the petitioner has been wrongly disqualified by the impugned order. According to him, though the plot in question stood in the joint names of the petitioner and his brother, the lease agreement was with the petitioner's brother. The Asstt. Registrar in her report had rightly found that rent was being paid to the petitioner's brother and that the petitioner was not getting any benefit, whatsoever, by virtue of shifting of the said Branch to Anjangaon. He submitted that though all the necessary documents in that regard were placed on record, the same were not taken into consideration by the Hon'ble Minister. He referred to the provisions of Section 75 of the said Act and Explanation-I thereto to indicate that the expression "family", which included brother, was only for the purposes of said Section and same could not be applied to the facts of the

present case. He placed reliance upon the Judgment of learned Single Judge in Nanaji Ganuji Bhokre v. Commissioner, Amravati Division, Amravati & others [1994 (2) Mh. L.J. 1277], and submitted that the impugned order was liable to be set aside.

8. Per contra, Shri A.M. Ghare, the learned counsel for the respondent no. 5, supported the impugned order. According to him, the facts on record were crystal clear and it was obvious that only because the petitioner was the Director of the Bank that such resolution came to be passed for shifting the Branch of the Bank to the premises jointly owned by the petitioner. That the rent was being paid in the account of the petitioner's brother was hardly relevant and that there were no mutation entries showing separate interests of the brothers was indicative of this fact. The learned counsel placed reliance on the judgment of learned Single Judge in Aruna Bhagwant Tiple v. Divisional Joint Registrar, Co-operative Societies, Nagpur & others [2011 (1) Mh. L. J. 196] and submitted that the expression "office of profit" ought to be interpreted in the light of the law laid down by the Hon'ble Supreme Court in Jaya Bachchan v. Union of India & others [2006 (5) Mh. L.J. 233]. It was, therefore, submitted that the impugned order did not call for any interference. Shri J.B. Kasat, learned counsel for the respondent no. 4 and Shri K.L. Dharmadhikari, learned Asstt. Govt. Pleader appeared for the respondent nos. 1 to 3 and they too supported the impugned order.

9. I have heard respective counsel for the parties at length and I have given due consideration to their respective submissions.

The disqualification of the petitioner has been sought under the provisions of Section 73CA (1) (vi) of the said Act. Section 73CA (1) (vi) of the said Act reads thus:-

"73CA. Disqualification of committee and its members

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he-

(I)

to

(v) ?.. ?.. ?.. ?..

(vi) is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be or is nominated as functional director on the committee of a society under sub-section (2) of Section 72A."

10. After the application for disqualification was filed, the District Deputy Registrar, Co-operative Societies, Amravati, called for a report from the Asstt. Registrar, Co-operative Societies, Amravati. The Enquiry Officer on 13th February, 2015 submitted his report. It was found by the Enquiry Officer that on 31st December, 2008, the petitioner and his brother Jayant had jointly purchased property bearing Plot No. 4, admeasuring 81.51 square meters situated at Anjangaon Surji. This property was purchased from one Dnyaneshwar Purushottam Patil. The petitioner was a member of the Managing Committee of the respondent no. 4 ? Bank since 6th October, 2009. Thereafter, on 6th March, 2010, Resolution no. 38 was passed by the Bank resolving to shift its branch from Surji to Anjangaon for the convenience of its customers. On 26th April, 2010, the brother of the petitioner ? Jayant executed a document agreeing to let out the said building jointly owned by him and his brother to the Bank for a period of five years on a monthly rent of Rs. 6720-00. These are the findings recorded by the Enquiry Officer in her report.

From the aforesaid, the facts are clear that the petitioner and his brother had jointly purchased the building in question on 31st December, 2008 and after the petitioner was elected as a member of the Managing Committee of the respondent no.4-Bank, this building was let out to house a branch of respondent no. 4 ? Bank at Anjangaon.

11. The validity of Section 73FF (1) (vi) of the said Act [as it then stood] has been upheld by the Division Bench in Murlidhar Bhaulal Malu v. Sudhakar Honaji Patil & another [1987 Mh. L. J. 944]. While doing so, it was observed by the Division Bench that as per the scheme of the said Act, two types of disqualifications were prescribed. One involved a stigma and other was in relation to a conflict between interest and duty. The provisions of Section 73FF (1) (v) and (vi) of the said Act involved conflict between interest and duty. It was then held that the word "any" would also contemplate a conflict between interest and duty ? qua ? the same society or qua ? a federal society if the said society is a member of the concerned federal society. After amendment, this provision now stands re-numbered as Section 73CA (1) (vi) in the said Act.

12. In the light of the aforesaid law laid down by the Division Bench, it is clear that the provisions of Section 73CA (1) (vi), after its amendment, intend to prevent any conflict between interest and duty. The said disqualification is intended to ensure purity of administration of co-operative societies. In the aforesaid background, if the facts of the present case are considered, it becomes evident that the building in question was admittedly owned by the petitioner and his brother. After the petitioner was elected as a member of the Managing Committee, the Bank passed a resolution for shifting its branch to a convenient place and on that basis, this branch was shifted in the premises owned by the petitioner and his brother. Though it was urged by the learned counsel for the petitioner that by virtue of an understanding between the petitioner and his brother, all the amount of rent was being deposited in the account of the

petitioner's brother and the petitioner himself had not benefited from this lease, the said submission cannot be accepted. Admittedly, the petitioner is a co-owner of the building in question and hence resort to the provisions of Section 75 of the said Act by the counsel for the petitioner is misplaced. That the amount of rent should be paid exclusively to the brother of the petitioner is an arrangement between the two brothers and same cannot have an overriding effect over the legal fiction that is created by virtue of the provisions of Section 73CA (1) (vi). It is obvious that the petitioner has a direct interest in the shifting of the branch in the premises jointly owned by him and he stands to benefit by the same. An arrangement by which the entire rent is to be paid to his brother cannot be used by the petitioner to extricate himself from the rigors of disqualification under the said provision.

13. Hon"ble Minister, while considering the Revision Application preferred by the respondent no. 5, has found that by virtue of the premises jointly owned by the petitioner and his brother being let out to the Bank, the petitioner had received benefit in said transaction. This conclusion arrived at is based on facts noticed by the Enquiry Officer in his report dated 13th February, 2015. This finding recorded by the Hon"ble Minister cannot be said to be contrary either to the record or to the spirit of Section 73CA (1) (vi) of the said Act. The decision relied upon by the learned counsel for the petitioner in Nanaji Ganuji Bhokre [supra] pertains to disqualification under the provisions of Section 73FF (v) of the said Act and hence same does not assist the case of the petitioner. The observations of Hon"ble Supreme Court in Jaya Bachchan [supra] and learned Single Judge in Aruna Bhagwant Tiple [supra] support the submissions made on behalf of the respondent no. 5.

14. As a sequel to the aforesaid discussion, I do not find that the impugned order suffers from any jurisdictional error. The respondent no.1 has rightly appreciated the controversy in question and has applied the law in the correct perspective. Hence Writ Petition stands dismissed. Rule stands discharged with no order as to costs.

At this stage, learned counsel for the petitioner seeks continuation of the interim protection that was granted by this Court on 18th November, 2015. The request as made is opposed by the learned counsel for the respondent no. 5.

In the facts of the case, the ad interim relief granted on 18th November, 2015 shall continue for a period of six weeks. The same shall cease to operate automatically thereafter.