

(2016) 07 BOM CK 0118
In the Bombay High Court
Case No : Writ Petition No.3446 of 2016

Damodar S/o Shamrao Pande

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

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

Citation : (2017) 1 ALLMR 822 : (2017) 1 BCR 453 : (2016) 6 MhLJ 254

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri R.J. Mirza, Advocate h/f Shri A.J. Mirza, Advocate, for the Petitioner; Shri Harshal Futane, Advocate, for the Respondents No. 4 and 6; Shri K.R. Lule, A.G.P, for the Respondents No. 1 to 3 and 5

Final Decision : Disposed Off

Judgement

Z.A. Haq, J.(Oral)—Heard Shri R.J. Mirza, Advocate h/f Shri A.J. Mirza, Advocate for the petitioners, Shri Harshal Futane, Advocate for the respondent Nos.4 and 6 and Shri K.R. Lule, A.G.P. for the respondent Nos.1 to 3 and 5.

2. Rule. Rule made returnable forthwith.

3. The elections of Managing Committee of respondent No.4 - Society were due on 3rd July, 2016. The respondent No.6 had submitted his nomination paper which was accepted by the Returning Officer. The petitioner has approached this Court with the grievance that the nomination paper of the respondent No.6 could not have been accepted as he is disqualified as per the bye-law No.50(6) of the Society as he failed to undertake construction within stipulated time on the plot allotted to him by the Society. The petitioner also alleged that the Note of Auditors showed that the respondent No.6 had not paid the amount of interest payable by him to the Co-operative Society from which he had taken loan and the respondent No.6 is disqualified to contest the election, on this count also.

By the order dated 22nd June, 2016 this Court directed issuance of notice

making it returnable on 29th June, 2016 and by an interim order the respondent No.5 was directed to put a note against the name of the respondent No.6 in the list to be published that the inclusion of name of the respondent No.6 in the list and allotment of symbol shall be subject to further orders to be passed in this petition. The notice was made returnable on 29th June, 2016 and the directions, as above, were given to the Election Officer to see that the respondent No.6 appears before the Court and brings on record the actual facts so that further appropriate orders could be passed.

On 30th June, 2016 when the matter was listed, the learned Advocate for the respondent Nos.4 and 6 sought two weeks' time. The conduct of the respondent No.6 prima-facie showed that he avoided to bring on record the actual facts and to assist the Court. The Election Officer had filed an affidavit on 28th June, 2016 stating that the Audit Note shows that the respondent No.6 was liable to pay interest and he had not paid that amount. Considering the facts on record, an interim order was passed directing that the name of the respondent No.6 be deleted from the list of validly nominated candidates. It is reported that the elections are conducted and the results are declared on 3rd July, 2016.

4. The Advocate for the respondent No.6 has submitted that he is liable to pay interest on the amount of loan taken from some other Society and not the respondent No.4 - Society and, therefore, the respondent No.6 cannot be disqualified from contesting the election of the Committee of respondent No.4 - Society.

Shri R.J. Mirza, Advocate for the petitioner, has relied on the provisions of Section 73CA of the Maharashtra Co-operative Societies Act, 1960 (for short "Act of 1960") and has submitted that the respondent No.6 is disqualified to be a member of the Committee of respondent No.4 - Society even if he is a defaulter of any other Co-operative Society.

5. Section 73CA(1)(i) of the Maharashtra Co-operative Societies Act, 1960 reads as under :

"73CA. Disqualification of committee and its members.

[A1]

(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) is a defaulter of any society;"

The provisions of Section 73CA(1)(i) of the Act of 1960 in clear and unambiguous terms lay down that a person will be disqualified to be a member of the Committee of Society if he is defaulter of any Society. The term "any" in Clause (i) of Sub-section (1) of Section 73CA of the Act of 1960 is wide enough and the

respondent No.6 is disqualified for being appointed as the Member of the respondent No.4 - Society even if he is a defaulter of another co-operative Society i.e. Ganesh Sahkari Dal Mill Sanstha, Daryapur.

6. As far as the other ground raised by the petitioner is concerned, the Advocate for the respondent Nos.4 and 6 has submitted that though at the time of allotment of plot as per the bye-laws prevailing at that time, the allottee was required to undertake construction within two years, the bye-laws are amended in 2014 and in view of the amended bye-laws, the allottee of plot can undertake the construction on the plot within seven years. The submission on behalf of the respondent Nos.4 and 6 is that the respondent No.6 can undertake construction on the plot within seven years from the date of amendment of the bye-laws in 2014.

The respondent No.6 is allotted plot by the respondent No.4 - Society by the resolution dated 31st March, 1996. At that time, the bye-laws provided that the construction should be undertaken within 2 years. It is undisputed that the respondent No.6 has not undertaken construction on the plot till date. As per the bye-laws before amendment in 2014, the respondent No.6 incurred disqualification for being appointed as member of Committee of the respondent No.4 - Society having failed to undertake construction on the plot allotted to him within two years from the date of allotment. The Advocate for the respondent No.6 has not been able to point out any provision in the amended bye-laws which wipes out the disqualification already incurred by the member of the Society.

7. In the present case there is no dispute on the facts. Therefore, it has to be held that the respondent No.6 is disqualified as per Section 73CA(1)(i) of the Act of 1960 and as per the bye-laws of respondent No.4 - Society and cannot be appointed member of the Committee of respondent No.4 - Society. I am conscious that in election matters this Court should be loath in interfering, however, as the relevant facts in the present case are not disputed and considering the relevant provisions, I am unable to refrain myself from interfering in the matter and exercising the extra-ordinary jurisdiction.

8. Hence, the following order:

(i) The decision of the respondent No.5 - Election Officer to accept the nomination paper of the respondent No.6 is quashed.

(ii) It is held that the respondent No.6 is disqualified as the member of the Committee of respondent No.4 - Society.

9. Rule is made absolute in the above terms.

10. In the circumstances, the parties to bear their own costs.