

(2016) 04 BOM CK 0185
In the Bombay High Court
Case No : Writ Petition No. 10457 of 2014

Dnyaneshwar @ Dinesh Waman Bhosale	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Co-operative Societies Act, 1960 — Section 152, 154, 22(2), 23

Citation : (2016) 5 ALLMR 128 : (2016) 6 BCR 151

Hon'ble Judges : R.M. Savant, J.

Bench : Single Bench

Advocate : Mr. V.P. Sawant a/w Mr. S.A. Rajeshirke, Mr. Prabhakar Jadhav, Mr. Rahul Vijaymane, Advocates, for the Petitioner; Mr. S.D. Rayrikar, AGP, for the Respondent Nos. 1 to 3; Mr. Kishor Maru, Advocate, for the Respondent No. 4

Final Decision : Allowed

Judgement

R.M. Savant, J. (Oral)—Rule, having regard to the nature of the challenge raised made returnable forthwith and heard.

2. The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 25.09.2014 passed by the then Hon''ble Minister for Cooperation, Government of Maharashtra, by which order, the Appeal filed by the Respondent No. 4 herein came to be allowed and resultantly, the order dated 15.05.2014 passed by the Divisional Joint Registrar, Cooperative Societies, Mumbai, came to be set aside and the order dated 29.04.2013 passed by the Deputy Registrar, "A" Ward, Mumbai, came to be confirmed.

3. The facts giving rise to the filing of the above Petition in brief can be stated thus : The Petitioner herein has purchased Office No. 10 in the building of the Respondent No. 4 society which is a commercial premises society from one Smt. Nargis Jal Pardiwala who was the member in respect of the said Office No. 10. The Petitioner vide his application dated 29.12.2011 applied for transfer of the membership from the name of the said Smt. Nargis Jal Pardiwala to his name.

The said application of the Petitioner was rejected by the Respondent No. 4 society by letter dated 11.01.2012. The said rejection was interalia on the ground that the application for membership was not in the prescribed format as contemplated by the bye laws. The Petitioner thereafter filed a fresh application on 31.01.2012 in the proper format. Having not received response to the said application made on 31.01.2012, the Petitioner filed an application before the Deputy Registrar of Cooperative Societies under Section 22(2) of the Maharashtra Cooperative Societies Act, 1960 (for short "the MCS Act"). Before the Deputy Registrar, the application of the Petitioner was opposed to on behalf of the Respondent No.4 society and the opposition was on the ground that the application of the Petitioner was not in the proper format as there is no bye law No.38(e)(ii) in the bye laws of the society. The Deputy Registrar, Cooperative Societies, "A" Ward i.e. Respondent No.3 by his order dated 29.04.2013 rejected the said application on the ground that the application filed by the Petitioner was not in proper format i.e. in terms of Form No. 1 bye law No.D1.3.

4. Aggrieved by the order dated 29.04.2013 passed by the Deputy Registrar, Cooperative Societies, "A" Ward, the Petitioner filed a Revision under Section 154 of the MCS Act before the Divisional Joint Registrar, Cooperative Societies, Mumbai Division, Mumbai. The said Revision Application was founded on the fact that the Petitioner has made compliances in the matter of making the application in the required format as also annexing the requisite documents. The share certificate in the name of Smt. Nargis Jal Pardiwala was annexed to the said application as also the application was accompanied by the requisite fees. The Respondent No. 4 society opposed the Revision Application interalia on the ground that the said Smt. Nargis Jal Pardiwala had kept the share certificates with one Mrs. Nalini Tulsidas Vora as security for the loan taken, that the title to the said premises does not belong to Smt. Nargis Jal Pardiwala and that in spite of calling upon the said Smt. Nargis Jal Pardiwala to submit the documents of title, she has failed to provided the same and that the earlier application dated 29.12.2011 of the Petitioner have been rejected by the letter of the Respondent No. 4 society dated 11.01.2012. The Revision Application was considered by the Divisional Joint Registrar who by his order dated 15.05.2014 allowed the same. The Divisional Joint Registrar has adverted to the legal position as enunciated by the judgments of the Learned Single Judges of this Court in John D'Souza v. Joint Registrar, Cooperative Societies and others, Order dated 29.06.2011 in Writ Petition No. 9881 of 2010, Harish Commercial Premises Co-operative Society Ltd. v. Smt. Varsha Dinesh Joshi & others, (2006 CTJ 544) as also Videocon Appliances v. Maker Chamber V. Premises Cooperative Society Limited & others, Judgment of Hon''ble Bombay High Court in Writ Petition No. 7471 of 2004 and observed that it is not for the Authorities exercising powers under the Cooperative Societies Act to go into the issue of title and that the Authorities are only required to consider whether the applications filed under Sections 22(2) and 23(2) are in order. The Divisional Joint Registrar held that the Petitioner having submit all the documents as also having filed the application which was found to

be in order by him, deemed it appropriate to set aside the order passed by the Deputy Registrar dated 29.04.2013 and allowed the Revision Application filed by the Petitioner vide his order dated 15.05.2014 and thereby directed the Respondent No. 4 society to accept the Petitioner as a member.

5. The Respondent No. 4 aggrieved by the said order dated 15.05.2014 passed by the Divisional Joint Registrar filed an Appeal before the State Government under Section 152 of the MCS Act. The State Government i.e. the then Hon''ble Minister for Cooperation has by the impugned order dated 25.09.2014 allowed the said Appeal, and as indicated above has set aside the order passed by the Divisional Joint Registrar dated 15.05.2014 and confirmed the order dated 29.04.2013 passed by the Deputy Registrar. The Appeal has been allowed for the reasons mentioned in the impugned order and a reading of the said order discloses that the Hon''ble Minister went into the issue of title and came to a conclusion that the said Smt. Nargis Jal Pardiwala who is the vendor of the Petitioner and a member of the Respondent No. 4 society did not have title to the said office and therefore the Petitioner could not be conferred with the membership of the Respondent No.4 society. As indicated above, it is the said order dated 25.09.2014 which is taken exception to by way of the above Petition.

6. The principal contention of the Learned Counsel for the Petitioner Mr. V. P. Sawant was that the Hon''ble Minister has erred in exercising the appellate powers when none existed having regard to Section 152 of the MCS Act. It was the submission of the Learned Counsel that only in respect of the orders passed under the provisions mentioned in the said Section 152 that an Appeal would lie. In the instant case, neither Section 22 nor Section 23 nor Section 154 appear in the said Section 152 and therefore the Appeal filed was thoroughly misconceived and mis founded. It was therefore the submission of the Learned Counsel that the impugned order have been passed without jurisdiction and is therefore required to be set aside.

7. Per contra, the Learned Counsel Mr. Kishor Maru sought to justify the filing of the Appeal against an order passed in Revision. The Learned Counsel sought to place reliance firstly on Section 165 of the MCS Act to contend that the State Government has the power to entertain any Appeal against any order where there is injustice. Reliance was also sought to place under Section 154(4) which gives power to the State Government to vest the power of Revision in an officer of the State Government of the rank of Secretary to the Government. However, the Learned Counsel was not able to point out any provision in the MCS Act where under Appeal would lie against an order passed under Sections 22 and 23 and thereafter against the order passed in Revision under Section 154.

8. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue that is posed in the instant matter is whether the Appeal filed by the Respondent No. 4 herein against the order dated 15.05.2014 passed by the Divisional Joint Registrar is maintainable. In the said context, it would be apposite to refer to Section 152 of the MCS Act.

"152. Appeal.(1) An appeal against an order or decision [under sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 78, 79, 85, 88 and 105 including against an order for paying compensation to a society] shall lie,

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom powers of the Registrar are conferred, tot he State Government.

(b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred to the Registrar.

[Provided that, no order of stay shall be issued in respect of the recovery of the dues under the award issued by the Liquidator unless fifty per cent of the amount stated in the award is deposited with the society by the Appellant.]

[(2) Where an appeal against any order or decision to the Cooperative Appellate Court has been provided under this Act, it shall lie to the Cooperative Appellate Court].

(3) An appeal under subsection (1) or (2) shall be filed within two months of the date of the communication of the order or decision.

[(3A) The Appellate Authority, in order to prevent the ends of justice being defeated, may pass such interim orders including order of stay against the impugned order, pending the decision and final hearing of the appeal:

Provided that, if any interim order have been passed by the Appellate Authority without hearing the other side, the Appellate Authority shall decide such application within a period of three months and pass the necessary orders on merits after giving an opportunity of being heard and for the reasons to be recorded in writing.]

[(4) Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revisions in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revisions provisions."

A reading of Section 152 of the MCS Act therefore makes it clear that an Appeal lies against an order passed under any of the provisions mentioned therein. In fact sub Section (4) makes it explicitly clear that save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act. Meaning thereby that Appeal would lie only against orders passed under the provisions mentioned in Section 152 of the said MCS Act.

9. Now coming to the contention urged on behalf of the Respondent No. 4 by the Learned Counsel Mr. Kishor Maru, the reliance placed on Section 165 of the MCS Act is thoroughly misconceived. The said provision confers the powers on the

State Government to frame rules for conduct and regulation of the business of the society or class of societies and for carrying out the purposes of the Act and therefore has no application in so far as filing of an Appeal is concerned. In so far as Section 154(4) is concerned, the said provision as indicated above enables the State Government to vest the power of Revision in an officer of the rank of Secretary to the Government as would be specified in the direction issued under the said provision. As indicated above, the Learned Counsel has not been able to pinpoint any other provision in the said MCS Act under which an Appeal would lie against an order passed under Sections 22 and 23 and thereafter under Section 154 of the MCS Act. It is well settled that an Appeal is a creature of a statute, hence if the statute does not provided for an Appeal, the Appeal provision cannot be read into the statute. In my view, therefore, the order passed by the State Government i.e. the Hon''ble Minister does not have any basis in any statutory provision, no Appeal could have been entertained by the State Government against an order passed under Section 22(2) and thereafter in a Revision under Section 154 of the MCS Act. The said order passed is therefore without jurisdiction and is therefore required to be quashed and set aside and is accordingly quashed and set aside. Resultantly, the order dated 15.05.2014 passed by the Divisional Joint Registrar will operate in the field. However it would be open for the Respondent No. 4 to challenge the said order dated 15.05.2014 if it so chooses. The said challenge if raised would undoubtedly be considered on its own merits and in accordance with law. It would be open for the Petitioner to apply for implementation of the said order dated 15.05.2014 passed by the Divisional Joint Registrar. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.