

(1996) 11 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 4150 of 1986

Jagannath Maruti Pisal and Others

APPELLANT

Vs

District Deputy Registrar

RESPONDENT

Date of Decision : 26-11-1996

Acts Referred:

Citation : (1997) 99 BOMLR 719

Hon'ble Judges : V.P. Tipnis, J;S.S. Nijjar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This petition impugned the legality and validity of the order date 17th July 1986 passed by the Assistant Secretary, Agricultural and Co-operative department, Government of Maharashtra, by which order the Government had taken a decision to support six vividh karyakari sahakari seva societies which can be viable and self sufficient and for the purpose granted permission for reconstruction of vividh karyakari Sahakari seva societies of Gogve, Kotroshi, Apati, Munawale, Uchat, Velapur, Alike and Bamnoli by keeping intact Gogve Vividh Karyakari Sahakari Seva Society. The area of operation in villages was also indicated under the said order. The order expressly states that Apati, Munavale, Uchat, Velapur, Vividh Karyakari Seva Sansthas were taken in liquidation on 19th July 1976 and the period was to end on 18th July 1986 and therefore, immediate action be taken to implement work of reconstruction and revival.

2. The petitioners are the office bearers or members of different vividh Karyakari Sahakari Seva Societies functioning in Jawli taluka.

3. We have heard Shri Nighot learned Counsel for the petitioners and Shri Sonawane A.G.P. appearing for the State.

4. The main challenge to the order is on the ground that respondent Nos. 4, 5, 7 and 9 societies were taken in liquidation on 19th July 1976 and that under the provisions of Section 109 winding up proceeding of a society shall be closed as

soon as practicable within six years. Although proviso to Sub-section (1) of Section 109 provides that the Registrar can grant extension the power is limited to grant extension, for a period of one year at a time and 4 years in the aggregate. It is contended that winding up proceedings in respect of these four societies must be deemed to have been closed in the eyes of law after completion of 6 years from the date on which the societies were wound up. It is further contended that in any case after the expiry of 10 years the liquidation proceedings are deemed to have been terminated.

5. In paragraph 5 of the petition, it is asserted by the petitioners that in Satara district there are many societies at the district and taluka level which elect directors from the constituency of member society. In such election different member societies are voters in Jawli Taluka. There are two political groups, one headed by sitting MLA Shri G.G. Kadam and other by petitioner No. 3. The respondent Nos. 4 to 10 societies fall within the constituency of said Kadam. The said Shri Kadam at the said election of 7.11.1985 secured 23 votes while the candidate supported by petitioner No. 3 got 18 votes. The group of said Kadam was anxious to consolidate their position by increasing the number of voters by bringing other societies within the constituency of member society. The respondent No. 4 to 10 societies being under liquidation could not be such voting members. With a view to enabling Shri Kadam to strengthen his position the Government has passed the order mala fide attempting reconstruction of societies which were defunct. It is also contended that the liquidator was appointed in respect of the respondent Nos. 4, 7, 9, and 10 societies and in his report dated 2nd July 1986 the liquidator has expressly stated that revival and restructuring of the said societies would be undesirable as the said societies are totally defunct. That the members of the society are not at all interested in functioning and the liquidator has given details of several factors in support of his opinion that the societies cannot be reconstructed.

6. Shri Sonawane, submitted that the petitioners are office bearers of different societies in Jawli Taluka and petition is politically motivated. Apart from this it was difficult for Shri Sonawane to support the impugned order. We must immediately notice that the petition was filed as back as in 1986 and is being disposed of in November 1996 the State has not filed any affidavit in reply. Thus all the material averments on factual aspects have remained unchallenged. From the facts on record it is clear that four societies i.e. respondent Nos. 4, 5, 7 and 9 were wound up as early as on 19th July 1976 and the remaining two societies i.e. respondent Nos. 6 and 10 were wound up on 8.8.1977 and 6.1.1977 respectively. The order of restructuring was passed on 17th July 1986. No record is brought to our notice that the Registrar in exercise of his powers u/s 109 had ever extended the period of winding up proceedings. Under the circumstances in fact the winding up proceedings must be deemed to have been closed. After six years from 19th July 1976 in respect of respondent Nos. 4, 5, 7 and 9 societies and in respect of respondent Nos. 6 and 10 societies from 8.8.1977 and 6.1.1977 respectively. Once the societies were defunct and not in existence at all

in the eyes of law, it was absolutely impermissible to pass order of reconstruction and amalgamation as is purported to have been done by order dated 17th July 1986 passed on a date which is just one day earlier to completion of 10 years.

7. For the aforesaid reasons we find the impugned order absolutely unsustainable. Petition is accordingly allowed and order dated 17th July 1986 at Exh. B to the petition is quashed and set aside. Rule made absolute in the aforesaid terms. Petitioners to get costs from respondents herein.