
(2005) 09 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 3552 of 1993

Jalgaon Jamod Taluka Kharedi Vikri Sanstha Ltd.

APPELLANT

Vs

Shivhari Pandurang Wagh and Others

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Citation : (2006) 1 ALLMR 237 : (2006) 1 BomCR 696 : (2006) 1 MhLj 653

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : L.A. Mohta, for the Appellant; Gopal Mishra, for respondent Nos. 1 and 2 and I. Bodade, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Heard Shri Mohta, learned counsel for the petitioner, Shri Mishra, learned counsel for respondents No. 1 and 2 and Smt. Bodade, learned AGP for respondent No. 4. Nobody appears for respondent No. 3, though served.

2. The grievance made by Shri Mohta, learned counsel for the petitioner is that the enquiry u/s 88 of the Maharashtra Co-operative Societies Act, 1960 was ordered and was conducted by respondent No. 3. After respondent No. 3 submitted his report in that enquiry, holding respondents No. 1 and 2 guilty of misconduct and ordering recovery from them, respondents No. 1 and 2 filed appeal u/s 152 of Maharashtra Co-operative Societies Act, 1960, (hereinafter referred to as the Act), before respondent No. 4 - Maharashtra State Co-operative Appellate Court. He contends that such appeal was not tenable and it was premature inasmuch as no formal order as contemplated by Section 88 of the Act was passed by any officer of the Co-operative department ordering such recovery. He invites attention of the Court to the subsequent order dated 1-10-1992 passed by the Assistant Registrar of Co-operative Societies, in which again recovery has been directed. He contends that because of this, occasion to file appeal accrued in favour of respondents No. 1 and 2 only after 1-10-1992 and not before that. It is his contention that therefore the Co-operative Appellate

Court could not have taken cognizance of such appeal. He further states that said objection was once again raised before the Co-operative Appellate Court but the same has been rejected by it. He, therefore, requests this Court to quash and set aside the order of Co-operative Appellate Court.

3. Shri Mishra, learned counsel for respondents No. 1 and 2 has argued that the Co-operative Appellate Court has considered this challenge in detail. He states that respondent No. 3 was admittedly appointed as Enquiry Officer u/s 88 of the Act and the report submitted by him is itself an order. According to him, no separate order is required to be passed u/s 88 of the Act to fastened any liability on present respondents No. 1 and 2. He argues that the moment such enquiry report is submitted, the liability is fastened and respondents No. 1 and 2 therefore got right to file appeal before the Co-operative Appellate Court. He further states that the Co-operative Appellate Court has found that respondent No. 3 has not conducted enquiry properly and thus respondents did not get opportunity to defend themselves in the matter. Therefore, the Co-operative Appellate Court has remanded matter back for fresh enquiry into the charges by appointing some other officer to conduct such enquiry. He states that the order in this respect cannot be interfered with in writ jurisdiction.

4. A perusal of Section 88 of the Act reveals that the said section contemplates enquiry by Registrar or a person authorised by him and the enquiry begins with framing of charges against the person or persons who were Directors of Co-operative Society and therefore were responsible for its management and administration. The Registrar or person authorised by him has to give reasonable opportunity to the person concerned and the person concerned, after such enquiry, has to make an order requiring such direction to repay or restore the money or property or any part thereof with interest. Thus, it is the authorised person who himself has to pass an order for repayment of money or for restoration of property. It is thus more than clear that there is no question of authorised officer, in this case respondent No. 3, submitting his report to any officer of Co-operative department and after receipt of said report, such officer of Co-operative department passing any independent order of recovery against respondents No. 1 and 2. The arguments of petitioner in this respect are misconceived. It is not the situation like one in Departmental Enquiry in which the Enquiry Officer is appointed by Disciplinary Authority and the Enquiry Officer only submits his report/findings to Disciplinary Authority and final order of punishment is passed by the Disciplinary Authority. The scheme of Section 88 of the Act is very clear and no two orders are required to be passed as contended by the petitioner in this case.

5. The perusal of the order of Co-operative Appellate Court in this respect also reveals that the Co-operative Appellate Court has considered this issue in para 7 of its judgment. I do not find anything erroneous or perverse in it. I, therefore, find that no case is made out for interference in writ jurisdiction. Writ Petition is accordingly dismissed. No order as to costs.

6. As the Co-operative Appellate Court has ordered de novo enquiry into the alleged misconduct of respondents No. 1 and 2 by some other officers apart from respondent No. 3 and the matter is very old, the Registrar, Co-operative Societies is directed to appoint another competent person as authorised person for conducting such enquiry u/s 88 of the Act and to see that said enquiry is completed as early as possible in any case within a period of six months from the date of communication of this order to him.

7. Smt. Bodade, learned AGP to communicate this order to the Assistant Registrar, Co-operative Societies, Jalgaon (Jamod) for its proper implementation.