

(2024) 07 BOM CK 0034
In the Bombay High Court
Case No : Writ Petition No. 3352 Of 2001

Kamadhenu Sahakari Grahanirman Sanstha Ltd	APPELLANT
Vs	
Suresh S/o. Narayan Madekar And Others	RESPONDENT

Date of Decision : 12-07-2024

Acts Referred:

Maharashtra Co operative Societies Act, 1960 — Section 35, 35(1), 152

Citation : (2024) 07 BOM CK 0034

Hon'ble Judges : S. G. Chapalgaonkar, J

Bench : Single Bench

Advocate : Madhav Ghode, P. K. Joshi, P. R. Katneshwarkar, N. D. Raje

Final Decision : Dismissed

Judgement

S. G. Chapalgaonkar, J

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner impugns the judgment and order dated 12.08.1998 passed by the Joint Additional Registrar, Co-operative Society, Aurangabad in Appeal No.80/1997 as well as order dated 18.07.2001 passed by the Secretary, Co-operation Department, Government of Maharashtra in Revision Petition No.96/1999.

3. The petitioner is Co-operative Housing Society registered under Maharashtra Co-operative Societies Act, 1960 (for short 'MCS Act, 1960'). The respondent no.1 was its member. The general body meeting of the Society was held on 08.12.1991, wherein it was decided that each member should contribute Rs.12,000/- towards development expenses of the Society. The respondent no.1 was present in the meeting. Neither, he deposit the amount as per resolution nor had he made application for extension of time. On 11.07.1993, the general body meeting of the Society was convened. The respondent no.1 was served with the notice of meeting. However, he deliberately remained absent at meeting. Hence,

Resolution was passed on 11.07.1993 to expel him from membership on the count of his non-cooperation. The decision of the Society was referred to Taluka Deputy Registrar, Cooperative Society, Aurangabad for confirmation. On 11.08.1994, said Authority confirmed and upheld the decision of expulsion of respondent no.1. Aggrieved by the said decision, respondent no.1 filed Appeal under Section 152 of the MCS Act, 1960 before respondent no.2-Joint Additional Registrar, Co-operative Society, Aurangabad. The said Appeal came to be allowed. Then aggrieved petitioner-Society filed Revision before state, which came to be dismissed vide impugned order dated 18.07.2001. Consequently, Taluka Registrar, Co-operative Society issued communication dated 01.08.2001 to implement the decision of respondent no.2 dated 12.08.1998. Aggrieved by the aforesaid orders, the petitioner-Society has filed present Writ Petition.

4. Mr. Ghode, learned Advocate appearing for the petitioner vehemently submits that in general body meeting dated 08.12.1991, the decision was taken to contribute Rs.12,000/- per member towards development expenses of the Society. The respondent no.1 was party to such Resolution. He failed to make payment and acted contrary to the bye-laws of the Society. He had not made any application for extension of time to deposit the amount. Due to non-cooperation of respondent no.1, the Society passed Resolution dated 11.07.1993 to expel him. The cheque of Rs.7000/- was posted to respondent no.1 against his shares. However, he refused to accept the same. Thereafter, special messenger was sent with a request to accept the cheque. However, respondent no.1 refused to accede the request. Thereafter, petitioner-Society decided to implement the decision of expulsion taken in the meeting dated 11.09.1993. The reference was made to the Competent Authority, who gave sufficient opportunity to respondent no.1 to put up his stand and thereafter, passed the order affirming/upholding the decision of the Society. The Appellate Authority as well as Revisional Authority failed to appreciate the material on record and conduct of respondent no.1 leading to decision of expulsion, while upsetting the decision of Taluka Deputy Registrar and Resolution of the Society.

5. Per contra, Mr. Katneshwarkar, learned Advocate appearing for respondent no.1 vehemently submits that respondent nos.2 and 3 have recorded elaborate reasons in support of their decisions. The decision of the Society was inconsistent with the statutory provisions contained under MCS Act, 1960 and Rules framed thereunder. Such a decision is rightly set aside by the Appellate Authority and confirmed in the Revision by the Secretary. In support of his contentions he relies upon the judgment of this Court in case of Aderabad Co-Operative Housing Society Ltd. Vs. Divisional Joint Registrar, Co-Operative Societies & Ors. 2007 (5) All MR 510., wherein it is held that the procedure contemplated under Rule 29 of the MCS Rules is mandatory. The notice containing agenda of general meeting needs to be served on the members proposed for expulsion at least one month in advance. In absence of such mandatory notice, Resolution passed by the Society cannot be sustained in law.

6. Having considered submissions advanced by the learned Advocates appearing for the respective parties, it is not in dispute that respondent no.1 was member of the petitioner-Society and under Resolution dated 11.07.1993 passed in general body meeting, the Society expelled the petitioner from the membership and Resolution was referred for confirmation to the Taluka Deputy Registrar, who consented for action. However, Appellate Authority i.e. respondent no.2, noting that provision dealing with expelling member under MCS Act, 1960 and Rules framed thereunder were not followed, set aside decision of the Society. With a view to appreciate the rival submission, it is apposite to refer relevant provisions of MCS Act, 1960. Section 35 of the MCS Act, 1960 provides for "expulsion of members". Sub-clause (1) with proviso appended thereto is relevant in the facts of the present case, which reads thus:

"(1) A society may, by resolution passed by a majority of not less than three-fourths of the members entitled to vote who are present at a general meeting held for the purpose, expel a member for acts which are detrimental to the interest or proper working of the society :

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body and no resolution shall be effective unless it is approved by the Registrar."

7. To supplement provisions of Section 35(1) of MCS Act, 1960, Rules 28 and 29 are framed under Rules of 1961. Rule 29 prescribes for "procedure for expulsion of members". Rule 29 reads as under:

"29. Procedure for expulsion of members.

(1) Where any member of a society proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next [general body meetings] [Substituted 'general meeting' by Notification No. CSL-2014/697/C.R.04/13C, dated 30.8.2014 (w.e.f. 23.12.1961).] and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the [general body meetings] [Substituted 'general meeting' by Notification No. CSL-2014/697/C.R.04/13C, dated 30.8.2014 (w.e.f. 23.12.1961).] to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.

(2) When a resolution passed in accordance with sub-rule (1) is sent to the Registrar [along with application, the Registrar may consider the resolution and after due inquiry and giving reasonable opportunity of being heard to such member give his decision within ninety days from the date of receipt of

application and communicate the same to the society and the member concerned.] [Substituted 'or otherwise brought to his notice along with application, the Registrar may consider the resolution and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and member concerned or otherwise brought to his notice along with application, the Registrar may consider the resolution and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and member concerned.' by Notification No. CSL-2014/697/C.R.04/13C, dated 30.8.2014 (w.e.f. 23.12.1961).]

The resolution shall be effective from the date of such approval.”

8. The minute reading of the aforesaid clauses depicts that the Society is empowered to expel the member by Resolution passed by not less than three-fourth of the members entitled to vote who are present at a general meeting held for the purpose, expel a member for acts which are detrimental to the interest or proper working of the society. The proviso prescribes for opportunity of hearing being given to the member during general body meeting. Further Resolution needs approval from the Registrar. Rule 29 further elaborates that when Society proposes to bring the Resolution for expulsion of any member, he shall be given written notice of such Resolution including agenda for the next general body meeting, calling upon him to present. Rule further stipulates that minimum period of one month shall be given from the date of service of notice to show cause against proposed expulsion and after hearing or considering the written representation of the member, the general body shall pass appropriate Resolution. Rule further prescribes that even the Registrar, who is referred that Resolution requires to grant opportunity of hearing to the member before he accords approval to such Resolution.

9. In the present case, it is not discernible from record that respondent no.1 was served with an advance notice, containing subject of expulsion as agenda of meeting and calling upon him to put up his stand during such meeting. Apparently, Resolution of expulsion has been passed during the meeting dated 11.07.1993 without serving agenda of meeting for proposed expulsion of respondent- member.

10. Perusal of the impugned order passed by the Appellate Revisional Authority shows that concurrent finding of fact is arrived that the petitioner-Society failed to comply the mandate of Rule 29 while passing the Resolution dated 11.07.1993.

11. This Court in case of Aderabad Co-Operative Housing Society Ltd. (supra) observed that the enquiry contemplated under Rule 29 is not mechanical or idle formality. The Registrar is required to satisfy himself that mandatory notice of not less than one month has been served upon the members containing agenda of expulsion in proposed general body meeting. This Court arrived at conclusion that mere service of notice is not sufficient, but it should be compliant of minimum time period and requisite contents incorporating agenda for expulsion.

Any shortfall is considered to be fatal. Applying the principles of law espoused by this Court, there is no scope to justify resolution dated 11.07.1993 passed by petitioner society and consequential approval granted by Taluka Deputy Registrar, Co-operative Society. The respondent nos.2 and 3 are justified in upsetting such decision in appellate and revisional jurisdiction.

12. Consequently, Writ Petition sans merit and the same is dismissed.

13. Rule is discharged.