

(2004) 02 BOM CK 0118
In the Bombay High Court
Case No : Writ Petition No. 643 of 2001

Matru Ashish Co-operative Housing Society Ltd.	APPELLANT
Vs	
Bhagwan V. Moorjaney and Others	RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Citation : (2004) 5 BomCR 737 : (2004) 3 MhLj 98

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : P.P. Chavan, instructed by Medekar and Co, for the Appellant; R.J. Mane, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocate for the petitioner, the respondent No. 1a in person and the learned Advocate for the respondent Nos. 2 to 5.

2. Though the impugned order is sought to be challenged on various grounds, it is not necessary to consider all those grounds in this petition, and suffice to say to the point of lack of jurisdiction to the Secretary for Co-operation to entertain the revision application u/s 154 of the Maharashtra Cooperative Societies Act, 1960 against the order dated 22nd March, 1999 passed by the Divisional Joint Registrar, Co-operative Societies (Appeal) M.D., Mumbai, in Revision Application No. 341 of 1998. Undoubtedly, simultaneously, it is also necessary to consider the grievance of the respondent No. 1a in relation to the order passed in the Revision Application No. 341 of 1998 on 22nd March, 1999.

3. This Court has consistently held that no second revision is maintainable u/s 154 of the Maharashtra Co-operative Societies Act, 1960. Once the authority, acting under the said Act, in exercise of the provisions of Section 154 of the Maharashtra Co-operative Societies Act, 1960, entertains the Revision Application against the order passed by any lower authority, there cannot be any further revision application against the order passed by the said revisional authority. The

law in that regard is well settled consequent to the decisions in the matters of Ramesh T. Gopalani v. Janata Sahakari Bank Ltd., Kalyan, reported in 2000 (3) M.L.J. 115, Khamgaon Urban Co-operative Bank Limited and Anr. v. Deepak s/o Wamanrao Ware and Ors., reported in 2003 (1) M.L.J. 10, Madhukar Baburao Deshmukh v. Jalgaon Jilla Maratha Vidya Prasarak Co-op. Samaj Ltd., Jalgaon and Ors., reported in 2002 (3) M.L.J. 201 and Virendra Bhanji Rathod and Ors. v. Anand Vihar Co-operative Housing Society Ltd., Mumbai and Ors., reported in 2004 (1) M.L.J. 656.

4. In the case in hand, undoubtedly, the Divisional Joint Registrar; Cooperative Societies, had entertained the Revision Application No. 341 of 1998 against the order dated 10th August, 1998 passed by the Deputy Registrar, Cooperative Societies "D" Ward, Mumbai. Once the said revisional powers were already exercised by the Divisional Joint Registrar u/s 154 of the said Act, it was not permissible for the Secretary, Co-operation, Government of Maharashtra, to exercise those powers once again in relation to the order passed by the Divisional Joint Registrar u/s 154 of the said Act. On that count alone, therefore, the impugned order passed by the Secretary (Co-operation), Government of Maharashtra, Mumbai, on 4th May, 2000 in Revision Application being No. RVA 2799/CR-280/15-C filed by the respondent No. 1 is liable to be quashed and set aside.

5. It has been strenuously argued by the respondent No. 1a that the revisional authority viz. the Divisional Joint Registrar, while disposing of the said revision application, did not take into consideration the various materials placed before it and thereby acted in improper exercise of jurisdiction while deciding the said matter. The order passed on 22nd March, 1999 in Revision Application No. 341 of 1998 does not disclose that the authority has taken into consideration all the points which were sought to be agitated by the said respondent and also the materials which are stated to have been placed before the concerned authority.

6. It is further to be noted that the respondent No. 1a has not filed any petition against the said order dated 22nd March, 1999 in Revision Application No. 341 of 1998 and yet she seeks to challenge the same in this petition filed by the petitioner against her and others in relation to the order dated 4th May, 2000 passed by the Secretary to the Government of Maharashtra. Undoubtedly, normally such a course may not be adopted. However, here are the extraordinary circumstances which reveal that the order which is sought to be challenged by the petitioner was passed without jurisdiction whereas, the order which was sought to be interfered with by the revisional authority without jurisdiction was passed in arbitrary exercise of its jurisdiction, and if is allowed to remain on record, it would virtually result in injustice to the respondent Nos. 1a and 1b. In other words, the interference in the impugned order would result in restoration of an illegal order. In such a case, certainly, the powers of writ Court cannot be availed of for perpetuating injustice, and it would be the duty of the Court to take note of the situation and to pass an appropriate order as the

circumstances may be warrant, albeit, without transgressing the parameters of the self-imposed discipline in the matter of exercise of powers under Article 226 of the Constitution of India. Being so, when an illegal order passed by the authorities below in the course of the proceedings, is brought to the notice of this Court, it would not justify reluctance to exercise the powers under Article 226 of the Constitution of India to undo the injustice sought to be done in the process of setting aside an order without jurisdiction. The decision of the Apex Court in *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, clearly supports this view.

7. In these circumstances, the respondent No. 1a is justified in contending that the said decision also cannot be allowed to stand and the authority is required to give proper hearing to the parties before deciding the matter. Viewed from this angle, the said order dated 22nd March, 1999 is also liable to be quashed and set aside and the matter to be remanded to the Divisional Joint Registrar, Cooperative Societies, to hear and decide the revision application, which was filed by the original respondent No. 1, afresh by giving proper opportunity to the respondent Nos. 1a and 1b herein being the legal representatives of the original petitioner in the said revision application, and thereupon to decide the same in accordance with the provisions of law. Accordingly, the order dated 22nd March, 1999 is also quashed and set aside and the matter is remanded to the Divisional Joint Registrar for being heard afresh, as stated above.

8. In the result, therefore, while setting aside the orders dated 4th May, 2000 passed by the Secretary (Co-operation), Government of Maharashtra, Mumbai, in Revision Application being No. RVA 2799/CR-280/15-C filed by the respondent No. 1 as well as the order dated 22nd March, 1999 passed by the Divisional Joint Registrar, Co-operative Societies, the matter is remanded to the later i.e. Divisional Joint Registrar, Co-operative Societies, to hear and decide the Revision Application No. 341 of 1998 afresh by giving a proper opportunity to the respondent Nos. 1a and 1b herein i.e. Smt. Bhagwanti Bhagwan Moorjaney and Ms. Aneeta Bhagwan Moorjaney, respectively, and thereupon to decide the same in accordance with the provisions of law. The respondent Nos. 1a and 1b as well as the petitioner to appear before the Divisional Joint Registrar, Cooperative Societies (Appeals), Mumbai, on 5th April 2004 at 11.30 a.m. The concerned authority, after giving an opportunity to the parties of being heard, shall expeditiously disposed of the said Revision Application, and in any case within a period of three months therefrom.

9. The rule is made absolute in above terms with no order as to costs.

10. Certified copy be expedited.