
(2019) 08 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition (Lodging) No. 1700 Of 2019

Ponvel Nadarajan And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 2(15), 2(16), 9(1), 73(i), 73I(1), 73A, 73CB(11), 73CD(14), 77CB(14), 73CB(14)(a), 77I, 77CB, 77(A), 77A(b), 77A(1)(b), 78, 78A, 79(2)(b), 80(2), 91
Maharashtra Co-Operative Societies (Election To Committee) Rules, 2014 — Rule 10(5), 10(9)
Constitution Of India, 1950 — Article 226, 243ZL, 243ZT

Citation : (2019) 08 BOM CK 0054

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Ponvel Nadarajan, Manish Upadhye, Vishal C. Ghosalkar, N.N. Bhadrashete, Priyanka Bhadrashete

Final Decision : Dismissed

Judgement

1. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 20th April, 2019 passed by the learned Deputy Registrar, respondent no.2 appointing the respondent no.3 as an authorized officer under section 77(A) of the Maharashtra Co-operative Societies Act, 1960 (for short "MCS Act") and further seeks to challenge the order dated 29th May, 2019 passed by the Tahsildar and Executive Magistrate, respondent no.5 under section 80(2) of the MCS Act. Some of the relevant facts for the purpose of deciding this petition are as under :

2. The petitioners claimed to be the members of the Managing Committee of the respondent no.4 society. The petitioners claimed to have been elected as the Managing Committee members by General Body of the respondent no.4 on 1st December, 2018 for the tenure of five years from 2018 till 2023.

3. Some time in the year 1987, the respondent no.4 society was registered under the provisions of MCS Act as "General Society" with 16 members. It is the case of the petitioners that the object of the respondent no.4 society was to procure piece and parcel of the land and to divide and allot the plot of land to its members to built their industrial premises for carrying on their individual industrial activities. The respondent no.4 society acquired the ownership of the property bearing survey no.34, Hissa nos.1 and 3 and CTS nos.339, 339/1, 340, 340/1 & 2, 341, 343, 343/1, 344, 345, 346 and 346/1 to 7 admeasuring 7057 sq. mtrs. Situated at Deonar village, Taluka Kurla, Mumai Suburban District, Mumbai under a registered Conveyance Deed dated 18th August, 1989 entered into between the respondent no.4 and one Vaity family. There were various disputes between the parties who purchased various units in the respondent no.4 society and the respondent no.4 in respect of the membership of those parties in the respondent no.4 society.

4. On 5th February, 2008, the respondent no.2, Deputy Registrar, Co-operative Societies passed an order under section 77(A) of the MCS Act thereby appointing an authorized officer for looking after day to day work of the respondent no.4 society for a period of six months. The respondent no.2 appointed an Administrative Committee comprising of P. Nadarajan and another member as the Chairman and the member of the said Administrative Committee. The elections of the committee members of the respondent no.4 society was thereafter held. It is the case of the petitioners that the respondent no.4 society was thereafter reconstructed with 20 members in compliance with the order of this Court in Writ Petition No.8966 of 2004. The new Managing Committee of the respondent no.4 society took charge on 6th October, 2008. The second general election of the respondent no.4 society was conducted on 18th September, 2013 for a period from 2013 to 2018.

5. It is the case of the petitioners that the election of the Managing Committee was held by the Returning Officer appointed by the respondent no.4 society on 24th November, 2018 in compliance with Maharashtra Ordinance No.XXV of 2018 dated 30th October, 2018. The results of the elections were declared in the said General Body meeting of the respondent no.4 on 1st December, 2018. It is the case of the petitioners that the Managing Committee members of the respondent no.4 society were elected for the tenure of next five years from 2018 till 2023.

6. On 15th December, 2018, the respondent no.2 passed an order under section 79(2) (b) of MCS Act thereby appointing the Authorized Officer for implementation of the order dated 26th June, 2014 for transfer of shares in favour of one of the member.

7. On 20th March, 2019, the respondent no.2 issued a notice to the petitioners to show cause as to why an Authorized Officer under section 77(A) of MCS Act shall not be appointed. It was stated in the said show cause notice that the Managing Committee of the respondent no.4 society had not informed the State Co-operative Election Authority six months prior to the expiry of its tenure and that

the management of the society was with four persons only. There was vacuum in the management of the respondent no.4 society. On 30th March, 2019, the petitioners filed a reply to the said show cause notice and sought two weeks time to file a detailed reply. It is the case of the petitioners that on 30th March, 2019, the petitioners submitted a copy of the said show cause notice along with preliminary reply to the said show cause notice issued to the petitioners to the Mumbai District Co-operative Housing Federation Limited. the respondent no.6 for seeking its expert opinion.

8. On 8th April, 2019, the respondent no.6 gave an expert opinion and opined that the appointment of the Authorized Officer proposed under section 77(A) of the MCS Act was not lawful in the present case. On 9th April, 2019, the petitioners submitted an additional reply to the show cause notice and made their oral arguments before the respondent no.2. On 20th April, 2019, the respondent no.2 passed an order under section 77(A) of the MCS Act thereby appointing the respondent no.3 as an Authorized Officer for looking after routine administrative work of the society and abolished the Managing Committee of the respondent no.4. The petitioners filed a Writ Petition bearing (Lodging) No.963 of 2019 in this Court impugning the orders passed by the Deputy Registrar, Co-operative Societies, directing registration of transfers and shares in favour of some of the parties, who had applied for membership of the respondent no.4 society.

9. During the pendency of the said writ petition, the petitioners brought to the notice of this Court the order dated 20th April, 2019 passed by the respondent no.2 under section 77(A) of the MCS Act. This Court accordingly disposed of the said Writ Petition (Lodging) No.963 of 2019 by consent of parties. This Court was pleased to set aside the order of the Deputy Registrar, Co-operative Societies insofar as three of the parties to the said writ petition and impleaded as the respondent nos.6, 14 and 15 and directed those respondents to apply to the society as and when the elections were held and its new Managing Committee was in place for consideration of their applications for transfer of shares. As far as the other respondents i.e. respondent nos.5 and 7 to 13 in the said writ petition, this Court suspended the order dated 11th March, 2019 passed by the Deputy Registrar. This Court in the said order dated 22nd April, 2019 directed the existing office bearers of the society to hand over the charge of the society to the Administrator appointed under an order dated 20th April, 2019.

10. The petitioners thereafter filed this writ petition inter-alia impugning the said order dated 20th April, 2019 passed by the respondent no.2. By an order dated 19th July, 2019 passed by S.C. Gupte, J., it was clarified that the directions issued by this Court in the order dated 22nd April, 2019 in Writ Petition No.1322 of 2019 does not in any way restrict the existing office bearers of the society to challenge the order of appointment of the Authorized Officer passed on 20th April, 2019.

11. It is submitted by the petitioners that the learned Deputy Registrar did not

have any jurisdiction to determine the legality of election of the managing committee of the society. Such issue could be decided only by the Co-operative Court under Section 91 of the MCS Act. He submits that the impugned order thus passed by the Deputy Registrar on 20th April, 2019 appointing the respondent no.2 as Authorized Officer under Section 77A of the MCS Act is without jurisdiction.

12. It is submitted that the election to the managing committee of the respondent no.4 society was already held in compliance with the Provisions of MCS Act and Maharashtra Ordinance No. XXV of 2018 dated 30th October, 2018 for the period from 2018 to 2023. The learned Deputy Registrar could not have abolished the managing committee of the respondent no.4 society, whose tenure was till 2023 by purportedly exercising the powers under Section 77A of the MCS Act. He submits that as a valid managing committee of the respondent no.4 society was already in place, which had been elected by way of democracy till 2023, abolition of such committee by the learned Deputy Registrar is ex-facie contrary to Section 77A 1(b-1) of MCS Act.

13. It is submitted by the petitioners that the election of the society has been validly conducted in accordance with the provisions of the MCS Act and as per the Ordinance dated 30th October, 2018, 6 managing committee members had been validly elected. Since there was no vacuum or void in the management of the respondent no.4 society, the provisions of Section 77A of the MCS Act were not at all attracted. There was no complaint received by the Deputy Registrar from any member of the society. It is submitted that the said order dated 20th April 2019 passed by the learned Deputy Registrar, Co-operative Societies was even otherwise passed in violation of the principles of natural justice and contrary to the provision of MCS Act and the Rules framed under the said Act. The learned Deputy Registrar did not have any power to appoint the Authorized Officer. There was no stalemate in the management of the respondent no.4 society. The learned Deputy Registrar could not have held that there were only 4 members, who were looking into the affairs of the society though there were 6 members elected as the members of the managing committee on 1st December, 2018.

14. It is submitted by the petitioners that the petitioners had forwarded a copy of the opinion obtained from the Mumbai District Co-operative Housing Federation Limited dated 8th April, 2019 to the respondent no.2 opining that there was no vacuum in the management of the respondent no.4 society as the managing committee was already elected in accordance with the said ordinance and the elected office bearers were already looking into the affairs of the society. The learned Deputy Registrar however did not consider the said opinion of the Mumbai District Co-operative Housing Federation Limited in the impugned order.

15. The petitioners placed reliance on Ordinance dated 30th October, 2018 issued by the State Government, which came into force on the date of publication of the said Ordinance in the Maharashtra Government Gazette dated 30th October,

2018. It is submitted that by the said Ordinance a proviso was added to 73CB (11) of the MCS Act after the existing proviso providing that in case of Housing Society having less than or upto 200 members, the election of the committee shall be conducted by the said Housing Society in the manner as may be prescribed. He submits that admittedly the members of the respondent 4 society are less than 200 in numbers and thus the elections of the respondent no.4 society was not required to be held by the State Co-operative Election Authority under Section 73CB(11) of the MCS Act.

16. It is submitted that in any event the respondent no.4 had addressed a letter to the Deputy Registrar, Co-operative Societies on 15th October, 2013 informing that the result was announced in the Annual General Body Meeting held on 25th September, 2013 thereby electing 5 members of the managing committee of the respondent. no.4. On 5th August, 2019 the petitioners mentioned the matter with a request to permit the petitioners to file an additional affidavit at this stage though the arguments were already concluded by the parties on 1st August, 2019 and the matter was closed for order. This Court however permitted the petitioners to tender a copy of the said notice dated 15th October, 2013 and heard the petitioner no.1, the learned Counsel for the respondent no.3 and the learned Counsel for the interveners on the relevance of the said notice dated 15th October, 2013, strongly relied upon by the petitioners.

17. The petitioners strongly placed reliance on the certificate of registration of the respondent no.4 registering the respondent no.4 under sub-classification as "General Type". He also invited my attention to the certificate of registration issued by the Registrar of Co-operative Societies on 25th November, 1987 in favour of the respondent no.4 under Section 9(1) of the MCS Act. He submits that since the respondent no.4 society being a Housing Society and has less than 200 members, the said ordinance issued by the State of Maharashtra was applicable to the respondent no.4 society and thus there was no violation of Section 77CB of the MCS Act by the petitioners.

18. Mr. Bhadrashete, learned Counsel for the interveners whose Chamber Summons bearing Lodging No.253 of 2019 for intervention in the writ petition is allowed by an order dated 1st August, 2019 was allowed to intervene in the writ petition and to make submissions. This Court did not express any views in the said order dated 1st August, 2019 about the membership dispute between the interveners and the Society while allowing the said Chamber Summons.

19. Mr. Bhadrashete, learned Counsel for the interveners submits that the tenure of the managing committee of the respondent no.4, which took charge of the affairs of the respondent no.4 on 25th September, 2013 had come to an end on 24th September, 2018. The learned Counsel invited my attention to the certificate of registration dated 23rd November, 1987 issued by the Registrar of Co-operative Societies annexed with Exh.A to the petition and would submit that respondent no.4 society was not registered as a Housing Society but was registered as a General Society. He has strongly placed reliance on Rule 10(5) of

the MCS Rules, which provides for classification of the society as Housing Society.

20. Learned Counsel for the interveners placed reliance on Section 73-I of the MCS Act and would submit that it was the duty of the managing committee members of the respondent no.4 to intimate the State Co-operative Election Authority for holding election before expiry of the atleast six months before expiry of its term as contemplated under Section 73CB(14)(a) of the MCS Act. He submits that since the then managing committee members of the respondent no.4 did not inform the State Co-operative Election Authority before expiry of its term in compliance of Section 73CB(14)(a) of the MCS Act to the State Co-operative Election Authority, the members of the then managing committee ceased to hold their office and in such a situation, the Deputy Registrar was empowered to take action as contemplated under Section 77A of the MCS Act. On taking such action under Section 73A of the MCS Act by the Registrar or the Deputy Registrar as the case may be the Authorized Officer was required to intimate to the State Co-operative Election Authority for holding of election with immediate effect. He submits that the Deputy Registrar was empowered to pass an appropriate order under Section 77A of the MCS Act and to appoint an Authorized Officer. He submits that proviso inserted by the Ordinance dated 30th October, 2018 to Section 73CB(11) would not apply to the respondent no.4 society and thus the so called election purported to have been held by the respondent no.4 society was totally without jurisdiction. The question of filing any dispute under Section 91 of the MCS Act therefore did not arise.

21. The petitioners in rejoinder strongly placed reliance on Article 243 ZL of the Constitution of India and also Section 78 and 78A of the MCS Act and would submit that in view of the said Article 243 ZL of the Constitution of India, the managing committee of the respondent no.4 society could not have been superseded or removed by the Deputy Registrar. It is submitted that unless the contingency provided under Article 243 ZL of the Constitution of India would have arisen, no administrator could be appointed by the Deputy Registrar by purporting powers under Section 77A of the MCS Act.

22. The petitioners also strongly placed reliance on Article 243 ZT of the Constitution of India and would submit that any law in variance with Article 243 ZT of the Constitution of India would be in force for only for one year i.e. upto 15th February, 2013 i.e. for a period of one year from 15th February, 2012. It is submitted that the said Article 243 ZT of the Constitution of India did not contemplate any notice to be issued by the managing committee to the State Co-operative Election Authority.

23. In so far reliance on notice dated 15th October, 2013, relied upon by the petitioners is concerned, it is submitted by Mr. Bhadrashete, learned Counsel for the interveners that by the said notice, the Deputy Registrar, Co-operative Societies was informed about the election of the managing committee members held for the period from 25th September, 2013 till 25th September, 2018 and no such notice contemplated under Section 77CB(14) of the MCS Act was at all

issued by the petitioners atleast six months prior to the date of the expiry of the term of the managing committee.

24. It is submitted by the learned Counsel that under Section 77A(1)(b) of the MCS Act, if the term of the committee of any society or any of its members expires, the Deputy Registrar has even suo-moto powers to appoint an Authorized Officer for the various acts. He submits that the Deputy Registrar in the impugned order has clearly rendered a finding about the breaches committed by the petitioners under Section 73CB(14) and has rightly appointed an Authorized Officer for looking after routine administrative work of the society.

25. In so far as the submission of the petitioners that the provisions of Sections 77A and 77CB of the MCS Act are inconsistent with Article 243 ZL or 243 ZT are concerned, he submits that the petitioners have not challenged the constitution validity of the said provisions and on the other hand has invoked those provisions.

26. The learned Counsel placed reliance on the averments made by the petitioners in the petition contending that the petitioners forgot to inform the State Co-operative Election Authority about the expiry of the tenure of the managing committee prior to such expiry of term of the managing committee. He submits that in any event said notice dated 15th October, 2013 relied upon by the petitioners also does not indicate that the said notice was issued by the petitioners before the expiry of the term of managing committee of the respondent no.4.

REASONS AND CONCLUSION :

27. A perusal of the application for registration of the society annexed at Exh.A along with supporting documents clearly indicates that the respondent no.4 had applied for registration as "General Type". Admittedly, there is no residential premises in the respondent no.4 society. The name of the respondent no.4 itself clearly suggest that it was formed as premises co-operative society. The registration certificate issued to the respondent no.4 on 25th November, 1987 also clearly indicates that the respondent no.4 has been registered as premises co-operative society and is with sub-classification under "General Type".

28. A perusal of the averments made in paragraph 4 of the writ petition also clearly indicates that the respondent no.4 is a premises co-operative society bearing registration as "General Society". The objective of the respondent no.4 is to procure piece and parcel of land and to divide and allot plots of land to its members to build their own industrial premises for carrying on with their individual industrial activities. It is thus clear that respondent no.4 society was not registered as a "Housing Society" as sought to be canvassed by the petitioners before this Court across the bar which submission as ex-facie contrary to the documents annexed by the petitioners themselves showing the registration of the respondent no.4 society as premises co-operative society with sub-classification "General Type" and is not a "Housing Society". The petitioners have not even pleaded in the writ petition that the respondent no.4 society is a

"Housing Society".

29. The question that now arises for consideration is whether under Section 73CB(14) of the MCS Act, the managing committee of the respondent no.4 was bound to inform the State Co-operative Election Authority about the expiry of its term of office atleast six months prior to the date of expiry of such term or not and if not informed whether the Registrar is empowered to take action as contemplated under Section 77A of the MCS Act read with Section 73-I(1) of the MCS Act or not and can appoint an Authorized Officer under Section 77A or not.

30. In my view, since the respondent no.4 society is not a "Housing Society" and was not registered as "Housing Society" but was registered as premises co-operative society with sub-classification "General Type" under Rule 10, Clause 9 of MCS Rules, Section 73CB(14) of the MCS Act clearly attracted to the respondent no.4 society. The tenure of the managing committee of the respondent no.4 society expired on 24th September, 2018. Under Section 73CB(14)(a) of the MCS Act, the committee of the respondent no.4 society was bound to inform the State Co-operative Election Authority about the expiry of its term of office atleast six months prior to the date of expiry of their term. The petitioners could not produce any proof providing such information by the then managing committee members of respondent no.4 six months prior to expiry of its term to the State Co-operative Election Authority either before the Deputy Registrar, Co-operative Societies or before this Court. The case of the petitioners on the contrary was that the petitioners forgot to inform the authority six months prior to the date of the expiry of their term to State Co-operative Election Authority. The arguments advanced by the petitioner before this Court is ex-facie contrary to and inconsistent with the averments made in the writ petition.

31. The notice dated 15th October, 2013 relied upon by the petitioners on 5th August, 2019 after conclusion of the arguments on 1st August, 2019 also clearly indicates that by the said letter addressed to the Deputy Registrar, Co-operative Societies, the respondent no.4 had only informed about the election of the members of the managing committee held for the period 25th September, 2013 till 25th September, 2018. The said letter is dated 15th October, 2013 and thus cannot be considered to be in compliance with Section 73CB(14)(a) of the MCS Act. The reliance placed on the said letter dated 15th October, 2013 by the petitioners is totally misplaced.

32. Section 2(15) of the MCS Act defines "General Society" i.e. General Society means a society not falling in any of the clauses of societies defined by the other clauses of Section 2. Section 2(16) of the MCS Act defines "Housing Society" i.e. Housing Society means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and service. It is not in dispute that the respondent no.4 society was registered as "General Society". In my view, even otherwise, the respondent no.4 did not satisfy any of the criteria for classification of the respondent no.4 a

"Housing Society" within the meaning of Section 2(16) of the MCS Act. The submission of the petitioners that the respondent no.4 society is a "Housing Society" is contrary to the records and is misleading.

33. In my view, since the respondent no.4 society was not a "Housing Society", the Ordinance dated 30th October, 2018 thereby adding a proviso to Section 73CB(11) providing that in case of "Housing Society" having less than or upto 200 members, the election of the committee shall be conducted by such Housing Society in the manner as may be prescribed would not apply to the respondent no.4 at all. The respondent no.4 thus could not have conducted the election of the managing committee on its own upon expiry of the term of the managing committee on 24th September, 2018. Such election could be held only by the State Co-operative Election Authority under the provisions of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, MCS Act, read with MCS Rules. The conduct of the election of the managing committee of the respondent no.4 upon expiry of the term of the managing committee on 24th September, 2018 on its own was thus ex-facie illegal.

34. In my view, in view of the failure on the part of the then managing committee members of respondent no.4 to comply with its duty to intimate to the State Co-operative Election Authority as provided under Section 73CB(14) of the MCS Act, in view of the provisions of Section 73-1(2) of the MCS Act since there was a willful failure on the part of the committee not to inform the State Co-operative Election Society, the members of the committee of the respondent no.4 ceased to hold their office. In such a situation, the Registrar is empowered to take action against the respondent no.4 as contemplated under Section 77A of the MCS Act. The Registrar is empowered to appoint an Authorized for Officer, who shall intimate to the State Co-operative Election Authority for holding of an election with immediate effect and to assist to make necessary arrangement for holding such election within the period prescribed.

35. Under Section 77A(b) of the MCS Act, since the Deputy Registrar was satisfied that the term of the committee of the respondent no.4 had expired and there was a failure on the part of the then managing committee of respondent no.4 to inform the State Co-operative Election Authority under Section 73CD(14) before expiry of six months prior to the date of expiry of the term of the managing committee, the Deputy Registrar was fully empowered to and was justified to appoint an Authorized Officer of the respondent no.4 society. The Deputy Registrar, Co-operative Societies had followed the requisite procedure under Section 77A read with the other provisions of the MCS Act and MCS Rules.

36. In so far as the submission of the petitioners that in view of the Articles 243 ZL and 243 ZT of the Constitution of India, the provisions of Sections 77CB, 77-I and 77A being inconsistent with those articles of the Constitution of India, no reliance could be placed by the respondents on those provisions to remove the managing committee members of the respondent no.4 is concerned, the petitioners have not challenged the constitutional validity of these provisions of

the MCS Act read with Rules and thus cannot be allowed to urge this submission before this Court. This Court thus does not propose to go into this issue raised across the bar for the first time by the petitioners.

37. In my view, there is no infirmity in the order passed by the learned Deputy Registrar, Co-operative Society on 20th April, 2019. The petition is devoid of its merits.

38. I, therefore, pass the following order:-

i). Writ Petition (Lodging) No. 1700 of 2019 is dismissed.

ii). The Authorized Officer appointed by the learned Deputy Registrar, Co-operative Societies shall inform the State Co-operative Election Authority to hold election of the Managing Committee of the respondent no.4 under the provision of the MCS Act read with MCS Rules and Maharashtra Co-operative Societies (Election to Committee) Rules, 2014.

iii). The State Co-operative Election Authority shall conduct election for the Managing Committee of the respondent no.4 within the time prescribed. Upon election of the Members of the Managing Committee of the respondent no.4, the appointment of the respondent no.3 made by the Deputy Registrar, Co-operative Societies to stand vacated. The Respondent no.3 in that event shall handover the records of the respondent no.4 handed-over to the respondent no.3 by the petitioners to the newly elected Managing Committee of the respondent no.4 within one week from the date of election of such Managing Committee Members without fail.

iv). Parties as well as the State Co-operative Election Authority to act on the authenticated copy of this order. There shall be no order as to costs.