

(2016) 08 BOM CK 0182

In the Bombay High Court

Case No : Writ Petition No. 6221 of 2016 with Civil Application No. 12075 of 2016

Rahul

APPELLANT

Vs

Divisional Joint Registrar

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 73-AAA(3), Section 77-A(3)

Citation : (2017) 1 MhLJ 147

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Mr. R.R. Karpe. h/f Mr. S.S. Gangakhedkar, Advocates, for the Petitioner; Mr. S.R. Yadav, AGP, for the Respondent/State; Mr. P.P. Khandagale-Patil, Advocate, for the Respondent No. 4; Mr. V.D. Hon Senior Counsel h/f Mr. A.V. Hon, Advocate, for the Respond

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The petition is filed to challenge the order made by Divisional Joint Registrar, Nashik Division, Nashik in appeal No. 199/2016 on 13.6.2016. In the appeal filed by present respondents, office bearers of Taklibhan Vividh Karyakari seva Sahakari Sanstha Ltd., Tahsil Shrirampur, District Ahmednagar, respondent No. 3, the learned Joint Registrar of Cooperative Societies Nashik had granted interim relief, stay to the operation of order made by the learned Registrar Cooperative Societies on 24.5.2016 by which learned Assistant Registrar had appointed administrator on the aforesaid Society as provided under section 77(A) of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act" for short). It appears that due to stay order, the charge which was taken over by the Administrator was required to be returned back to the respondents. Office bearers represented to the Administrator and authority that the stay was of such nature. The order dated 27.6.2016 does not show that stay of such

nature was granted.

3. Civil Application No. 12075/2016 is filed by the petitioners to inform to this Court that the learned Divisional Joint Registrar, Cooperative Societies has decided the appeal itself and the appeal is allowed. In view of this circumstance, the prayer is also made in the Civil Application to allow amendment in the writ petition to include the relief of setting aside the decision given in the appeal itself. In view of the nature of dispute and as in the original proceeding also, this Court could have made observations with regard to the propriety of stay order in view of the provisions of aforesaid Act, this Court allowed the amendment and the matter is heard as it is a matter against the decision given by the Divisional Joint Registrar in Appeal No. A-199/2016 dated 11.8.2016.

4. The record produced and submissions made show that present petitioners have raised the dispute with regard to the entitlement of 393 persons shown in the voters list to remain as voter and the proceeding in that regard was filed by petitioner well before declaration of the programme of election of this Society. As per the latest position, the revision filed by 207 persons to challenge the order made by the learned Assistant Registrar by which Assistant Registrar has held that they cannot become members is dismissed by the Joint Divisional Registrar, but the revision filed by 69 other persons against the same decision is still pending. Remaining 117 persons preferred not to challenge the decision of Assistant Registrar. In view of the dispute which is going on with regard to the entitlement of 393 persons to vote in the election and the order made by Returning Officer against the present petitioner, another proceeding, Writ Petition No. 4196/2016 is filed and the said petition is still pending in this Court. In the said petition, this Court by order dated 7.4.2016 has allowed all the 393 persons in respect of whom there is dispute, to vote in the election, but their votes are ordered to be kept in separate ballot box. As one revision is still pending and this Court has indirectly held that the matter as regards entitlement of these persons to vote needs to be considered first, the results of the elections are withheld.

5. The term of the previous office bearers is already over and in view of that circumstance, Assistant Registrar had made the order of appointment of Administrator. The learned counsel for petitioners submitted that in the final order the learned Divisional Joint Registrar has considered the position of law prior to the amendment dated 14.2.2013 and so, error is committed in setting aside the order made by the learned Assistant Registrar. He submitted that in view of the position of law created due to the amendment, no scope is left for extending tenure of the officer bearers under any circumstances. He took this Court through relevant provisions of aforesaid Act.

6. The provision of section 77A of the Act gives power to the Registrar to make appointment of Administrator under various circumstances and one of the circumstance is expiry of the term of the office bearers. The relevant portions of section 77A (1) (b) and other relevant portions are as under :-

"77A. Appointment of member of committee, new committee or administrator, where there is failure to elect member, to constitute committee or where committee does not enter upon office - (1) Where the Registrar is satisfied that,-

(i-a)

(a)

(b) the term or extended term as the case may be, of the committee of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the members required to fill the vacancies;

(c)

(d)

(e)

(f)

the Registrar may, either suo-motu or on the application of any officer of the society, by order appoint-

(i) any member or members of the society to be the member or members of the committee to fill the vacancies;

(ii) a committee, consisting of not more than three members of the society; or one or more administrators, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office:

Provided that, before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the notice and consider all objections and suggestions received by him within that period:

Provided further that, it shall not be necessary to publish such notice in any case where Registrar is satisfied that immediate action is required to be taken or that it is not reasonable practical to publish such notice.

(2)

(3) The Committee or Administrator so appointed shall hold office for a period of six months from the date of assuming the management of the society and shall make necessary arrangements for constituting a new committee within the said period and for enabling the new committee including any new committee referred to in clause (f) of sub-section (1), which is determined by the Court to have been legally elected, to enter upon office.

Provided that, if a new committee is not, or can not be constituted at the expiry or termination of the term of office of the committee or Administrator, for any

reason beyond the control of the committee or Administrator, the term of office of the committee or Administrator, as case may be, shall be deemed to be extended, until the new committee is duly constituted."

7. Aforesaid proviso to sub section (3) of section 77A came to be deleted with effect from 14.2.2013. The provision of section 73AAA (3) provided as under before amendment :-

"(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee."

The aforesaid provisions show that no scope is left to the directors of the Cooperative Society to continue in the office when the term of the Directors expire and similarly, the office bearers also cannot continue in the office. It appears that the learned Divisional Joint Registrar considered the provision which is already deleted and also the referred the case on which reliance was placed by the office bears viz. AIR 1984 AIR BOMBAY 56 [Ghatageppa Parreppa Mugeru and Ors. v. M.R. Naik and Ors.]. The observations in the case were made by this Court in view of the previous provisions of the Act and it was held that there was no failure on the part of the members of the Society to elect members of Managing Committee and so, the previous members were entitled to continue in the office. In that case, there was stay order of the Court to the elections and due to that new members could not be elected after the expiry of term of previous members. This Court has no hesitation to hold that in view of the position of law created after the amendment of 14.2.2013, no such scope is left and the previous managing committee members or the office bearers cannot continue in their office under any circumstances.

8. In the present matter, the previous office bearers are interested in getting the result in favour of aforesaid 393 voters and they want that these persons need to be allowed to vote in the elections. Only due to this circumstance and as the result of revision filed by around 69 persons is yet to come out, the results are withheld. Thus, it can be said that only due to the desire of previous office bearers that these 393 persons need to be allowed to vote in the election the results are withheld. It cannot be said that those office bearers are not at fault as decision in respect of many members has come out and it is held that they cannot become the members of the Society and they were made members by these office bearers. In view of these circumstances, this Court holds that the decision given by the learned Divisional Joint Registrar cannot sustain in law and the following order is made.

ORDER

(I) The petition is allowed. The judgment and order of learned Divisional Registrar, Co-operative Societies, Nashik, Division Nashik delivered in appeal No. A-199/2016 is hereby set aside. The order made by Assistant Registrar on 24.5.2016 is hereby restored. The charge is to be immediately taken over by the

Administrator, who is to be appointed by Assistant Registrar. Civil Application is disposed of as allowed.

According to the learned Senior Counsel, Shri. Hon, the previous administrator appointed by the society is brother of the petitioner. So that man is not to be appointed as administrator and preferably somebody from the department is to be appointed. The learned AGP to communicate the order to authority.

Rule is made absolute in aforesaid terms.

Authenticated copy is allowed.