
(2011) 08 BOM CK 0139

In the Bombay High Court

Case No : Contempt Petition No. 350 of 2009 in Writ Petition No. 6262 of 2009

Ram Jadhav

APPELLANT

Vs

V.S. Indulkar and Others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Citation : (2011) 7 ALLMR 383 : (2012) 1 BomCR 801 : (2011) 6 MhLj 562

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar, instructed by R.V. Govilkar and S.B. Khurjekar, for the Appellant; R.S. Ghadge, instructed by A.S. Desai, for respondent Nos. 1 to 12 and A.I.I. Patel, A.G.P., for the Respondent

Judgement

J.H. Bhatia, J.—Heard the Learned Counsel.

Perused previous orders. It appears that on 23rd July, 2008, the Deputy Registrar Co-operative Societies, Pune passed an order u/s 78(1) of the Maharashtra Co-operative Societies Act superseding the Managing Committee and appointed an Administrator. That order was challenged before the Divisional Joint Registrar Co-operative Societies, Pune who stayed the order passed by the Deputy Registrar. It was interim stay. As a result order about appointment of Administrator came to be stayed. Thereafter, the Petitioner filed Intervention Application.

2. On 10th September, 2008, the Divisional Joint Registrar vacated the interim stay order, result of which would be the appointment of Administrator as per the order passed by the Deputy Registrar. The order dated 10th September, 2008 was challenged in Writ Petition No. 6436/2008. It was contended on behalf of the Petitioners in their Petition, that the order vacating interim relief was in breach of principles of natural justice as Petitioners, who were Appellants before the Divisional Joint Registrar, were not given opportunity of hearing. On 19th September, 2008 this Court in the said Writ Petition stayed the order dated 10th September, 2008 passed by the Divisional Joint Registrar. The effect of this order

was to revert back to the interim stay granted by the Divisional Joint Registrar to the appointment of the Administrator. Later on 20th November, 2008, this Court Contempt Petition No. 350 of 2009 in W. P. No. 6262 of 2009 decided on 11-8-2011 (Bombay) directed the parties to maintain status-quo as on 19th September, 2008. It is contended by the Petitioner that the charge of management was already taken over by the Administrator on 10-9-2008 after the interim stay was vacated by the Divisional Joint Registrar. This fact was not disclosed by the Respondents before the Court while filing the Writ Petition No. 6436/2008. As such on 19th September, 2008 when this Court stayed the impugned order dated 10th September, 2008, it was not pointed out to the Court that the Administrator had already taken over the management and by suppressing the fact secured the order dated 19th September, 2008. As on 19th September, 2008 when this Court passed the order, the Administrator was in-charge of the management, the order dated 20th November, 2008 directing the parties to maintain status-quo as of 19th September, 2008 would mean that the Administrator would continue to be in management. In spite of this the Respondents held the Annual General Meeting on 30th December, 2008 and also held election for 3 posts and thus Respondents committed contempt of court by violating the order of status-quo passed by this Court on 20th November, 2008.

3. In the Affidavit-in-Reply filed by Respondent No. 2 - Ujawal H. Mohite it is contended that the charge was never taken by the Administrator either on the basis of the order passed by the Deputy Registrar or after the Divisional Joint Registrar had vacated the interim relief granted by himself. It is contended that the management was still with the Managing Committee, which was superseded by the order of the Deputy Registrar and that as Managing Committee was still in the management, it was justified in holding the Annual General Body Meeting as well as the elections to fill in 3 vacancies in the Managing Committee which had become vacant. Thus, the Respondents have tried to justify their action.

4. It may be noted that Appeal No. 48 of 2008 was allowed by the Divisional Joint Registrar by order dated 30th January, 2010. That order was challenged by the Petitioner by filing the Revision Application No. 143 of 2010 before the Hon"ble Minister Co-operation, Government of Maharashtra. The Revision Application was allowed by Hon"ble Minister on 22nd July, 2011 and the order passed by the Divisional Joint Registrar in Appeal was set aside. The order passed by the Deputy Registrar on 23rd July, 2008 for supersession of the Managing Committee and appointment of the Administrator was thus confirmed.

5. The Learned Counsel for the Petitioner has pointed out that para 9 of the order passed by the Hon"ble Minister, shows that after perusal of the complete record it was found that in the final order dated 30 January, 2010 the Divisional Joint Registrar had not stated anything about taking over the charge by the Administrator on 10th September, 2008 but in the previous order dated 10th September, 2008 itself it had become clear that Administrator had taken over charge.

6. The documents reveal that after the Deputy Registrar, Co-operative Societies, passed the order appointing the Administrator, the concerned Administrator approached the Chairman, Secretary and public authorities asking them to hand over the charge of the management to him but in vain. On 10th September, 2008, he again addressed a letter to the Chairman as well as Secretary of the Societies informing that stay to the order of the Deputy Registrar was vacated by the Joint Registrar on 10th September, 2008 and therefore, Chairman and Secretary were bound to handover the possession of the record as well as properly to the Administrator, immediately. By that letter he declared that the conduct of the Chairman and Secretary was highly objectionable and serious and he further declared that he was taking over the charge immediately. Having declared so, he asked to handover the possession of complete record and property of the society to him, otherwise action would be taken u/s 146 of the Maharashtra Co-operative Societies Act. On the same day he also addressed a letter to Executive Director, Pune District Co-operative Bank, Branch Manager of Pune District Co-operative Bank, Gokhale Nagar, Pune and other Branches informing that he had taken over the charge as Administrator and thenceforth no cheque or cash transactions shall be entertained by the Banks without his signature and Stamp. He also handed over the copy of that letter to the Deputy Registrar, Co-operative Societies. He also made a grievance to Tahasildar about the conduct of the Chairman and Secretary of the Society. The record reveals that on 12th September, 2008, Tahasildar passed an order u/s 80 of the Act directing Police Inspector, Chaturshringi Police Station to depute a police officer of the rank not less than P.S.I. to handover complete record and register to the Administrator Shri R.S. Jhanje.

7. The Learned Senior Counsel for the Petitioner contends all these facts were suppressed from this Court on 19th September, 2008 when this Court in Writ Petition No. 6436/2008 had stayed the order of the Divisional Joint Registrar. In view of the documentary evidence referred above, it is clear that on 10th September, 2008, the Administrator had taken over the charge of the management of the society. On 19th September 2008 when this Court passed the order, the Administrator was in-charge of the management. On 20th November, 2008 when this Court directed the parties to maintain status-quo as of 19th September, 2008. On 19th September, 2008 the management was with the Administrator and not with the Managing Committee, which was already superseded. The Respondents were fully aware of all these facts. It appears that in spite of this the respondents continued to flout the orders of the authorities as well as of this Court and refused to hand over the record of the society to the Administrator. Being in custody of the record they managed to hold the Annual General Meeting on 30th December, 2008. Not only they held and conducted the meeting but also held the elections to fill up 3 vacant posts in the Managing Committee. In view of the status-quo order, they were not in-charge of the management and therefore, they had no authority to hold such election. By holding such election they committed breach of order of status-quo as of 19th

September, 2008 passed by this Court on 20-11-2008.

8. Though, the Contempt Petition is filed against the Respondent Nos. 1 to 12, Respondent No. 12 is Society itself and Respondent Nos. 3 to 11 were only members of the Managing Committee and were not responsible for holding Annual General Meeting or the elections. Respondent No. 1 was Chairman and Respondent No. 2 was the Secretary of the Society before the Managing Committee was superseded by the order of the Deputy Registrar. In view of all this material, I hold that the Respondent Nos. 1 and 2 have committed the breach of stay order of this Court and thereby Contempt of the Court.

9. Heard, the Learned Counsel on the point of punishment about Contempt of Court committed by the Respondent Nos. 1 and 2. The Learned Counsel for the Respondents contends that in para 2, the Respondents have offered the unconditional apology. However, if the Affidavit-in-Reply filed by the Respondent No. 2 is carefully seen, it does not appear that genuine and sincere apology is offered. Attempt is actually made to justify the contempt throughout. The Learned Counsel, did not show any conduct on the part of the Respondent Nos. 1 and 2 nor he made any statement as to how Respondent Nos. 1 and 2 propose to purge the contempt. At this stage, I have asked the Learned Counsel whether they intend to purge the contempt and the Learned Counsel clearly makes negative statement. Therefore, the unconditional apology offered by the Respondents in para 2 of the Affidavit-in-Reply cannot be accepted as bona fide apology.

10. In view of the above, circumstances, the Respondent No. 1 and 2 are held guilty of Contempt of Court and are punished with a fine of Rs. 2000/- each. Fine be deposited with this Court within 2 weeks.