
(2017) 03 BOM CK 0172
In the Bombay High Court
Case No : 6220 of 2016

Shri Rajendra S/o. Hiralal Jain

APPELLANT

Vs

The State Government

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

[Maharashtra Co-operative Societies Act, 1960](#), [Section 152](#), [Section 166](#), [Section 73AAA\(3\)](#), [Section 77A \(1\)](#)
- Appeals - Repeal, saving and constructi

Citation : (2017) 03 BOM CK 0172

Hon'ble Judges : Z.A.Haq

Bench : SINGLE BENCH

Advocate : A.M.Ghare, Bharthi Dangre, N.S. Rao, Shweta Jaiswal, V. V.Bhangde, S.K. Tambde

Judgement

1. Heard.
2. RULE. Rule made returnable forthwith.
3. The petitioners have challenged the order issued by the respondent No.2 Divisional Joint Registrar, Cooperative Societies superseding the Executive Committee of the petitioner No.2 and appointing the respondent No.3 as Administrator to manage the affairs of the petitioner No.2 society. According to the respondents, this action is required to be taken as the committee of the respondent No.2 society failed to take steps for holding elections on time and as the committee cannot continue after its term of five years, as provided by Section 73AAA(3) of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the "Act of 1960") is complete.
4. The respondents and the interveners have raised a preliminary objection to the maintainability of the petition on the ground that the impugned order is assailable in appeal under Section 152 of the Act of 1960. Alternatively, it is contended that only one of the elected members of the Executive Committee i.e.

the petitioner No.1 has challenged the order appointing Administrator and this shows that except for the petitioner No.1, other members of the Committee of the petitioner No.2Society are not aggrieved in the matter and therefore, the challenge at the behest of the petitioner No.1 only need not be entertained. It is further contended that the General Manager is not having authority to file petition on behalf of the petitioner No.2society without there being any resolution of the Committee of the petitioner No.2society.

5. The objection to the tenability of the petition on behalf of the petitioner No.2 without there being a resolution of the Committee of the petitioner No.2society is inconsequential in the facts of the present case as the petitioner No.1 admittedly is an elected member of the Committee of petitioner No.2Society and he was Chairman of the Committee when the impugned order was issued and therefore, the challenge at the behest of the petitioner No.1 will have to be considered.

6. As far as the objection to the maintainability of the petition on the ground of alternate statutory remedy provided by Section 152 of the Act of 1960 is concerned, the learned advocate for the petitioner has argued that the impugned order has been issued illegally and overstepping the powers and authority conferred by Section 77A of the Act of 1960 and therefore, this Court can examine the challenges raised by the petitioner in this petition without relegating the parties to the alternate forum.

7. It is undisputed that the term of the elected committee of the petitioner No.2society was to expire on 18th September, 2016. It is admitted that the State Government postponed the elections of the committee of the petitioner No.2society by a general order issued in respect of ClassA Cooperative Societies on 13th May, 2016 under Section 73CC of the Act of 1960. The elections were postponed till 30th September, 2016. It is admitted that the Administrator is appointed on 17th October, 2016. The submission on behalf of the petitioners is that notice as required by the first proviso below subsection (1) of Section 77A of the Act of 1960 was not published on the notice board at the Head Office of the society before appointing Administrator and therefore, the appointment of the Administrator is illegal being in violation of the mandate of the statute.

8. The learned Government Pleader appearing for the respondent Nos. 1 and 2 has submitted that as per Section 73AAA(3) of the Act of 1960, the term of office of the elected members of the Committee is 5 years from the date of election and there is no provision which enables the members of the elected committee of the cooperative society to continue after completion of their term of five years and as the term of the executive committee of the petitioner No.2society expired on 18th September, 2016 and new executive committee was not elected/constituted, the administrator is rightly appointed by the impugned order.

9. The learned Government Pleader has submitted that as the term of the executive committee of the petitioner No.2society expired on 18th September, 2016 and it had no right to continue after completion of its term, there was no

need to publish notice as required by the first proviso below subsection (1) of Section 77A of the Act of 1960 and the respondent No.2 Divisional Joint Registrar rightly exercised his powers as per second proviso below subsection (1) of Section 77A of the Act of 1960 and mentioned this in the impugned order that there was no need to publish the notice as required by the first proviso. To support the submission, the learned Government Pleader has relied on the judgment given by the Division Bench of this Court in the case of Chandralok ... S. Ltd. vs. Asst. Registrar, reported in 1992 Mh.L.J. 1118 and the judgment given by the Division Bench of this Court in the case of Basawraj and Ors. Vs. The State of Maharashtra and Ors. in Writ Petition No. 3551 of 2015 and other connected matters.

10. The above submission is countered by the learned advocate for the petitioners by relying on the provisions of Section 166(4) of the Act of 1960 which lays down that the committees of which the elections become due after 31st March, 2013 shall continue till the elections of such societies are held as per the Act of 1960 as amended by the Maharashtra Act No.16 of 2013. It is argued that the elections of the executive committee of the petitioner No.2society were due after 18th September, 2016 i.e. after 31st March, 2013, therefore, the Committee of the petitioner No.2 society could not have been superseded and the Administrator could not have been appointed on the ground that the term of the committee expired on 18th September, 2016.

11. In the present case, admittedly, the State Government postponed the elections of the executive committee of the petitioner No.2society by the general order issued on 13th May, 2016, more than four months before the term of the Executive Committee of the petitioner No.2society expired. The elections were postponed on the ground that drought conditions prevailed in the region. The elections were not postponed because of any fault attributable to the executive committee of the petitioner No.2society. Though before this Court it is argued that the executive committee of the petitioner No.2society has not taken any steps to see that the elections could be conducted on time, this reason is not recorded in the impugned order. The only reason recorded in the impugned order for superseding the executive committee of the petitioner No.2society and appointing an administrator is that the term of the executive committee had expired and it cannot be extended. In these facts, the only point which I have to consider is whether the Act of 1960 enables the elected members of the executive committee to continue beyond the period of five years as provided by Section 73AAA(3) of the Act of 1960, if the elections could not be held for some reasons and the new executive committee is not elected/ constituted.

12. The Maharashtra Act No. 16 of 2013 brought substantial changes in the Act of 1960 because of which the State Government felt that there may be delay in holding elections of the executive committees of the cooperative societies. Therefore, Section 73CB(15) was inserted by the Maharashtra Act No. 16 of 2013 providing that if the election of the executive committee was due on the date of

commencement of the Maharashtra Act No. 16 of 2013 i.e. 14th February, 2013 or became due after that date until 31st March, 2013, the election was to be held before 30th June, 2015. Simultaneously, subsection (4) of Section 166 of the Act of 1960 is inserted by the Maharashtra Act No. 16 of 2013 providing that the committees of which the elections become due after 31st March, 2013 shall continue till the elections to such societies are held under the provisions of the Act as amended by the Maharashtra Act No.16 of 2013. Proviso below subsection (4) of Section 166 of the Act of 1960 provides that the executive committee of the society shall continue till the newly elected committee assumes office.

13. These provisions are considered by the Division Bench of this Court in the judgment given in the case of Basawaraj and ors.(supra). In paragraph No.17 of the judgment it is held that subsection (4) of Section 166 of the Act of 1960 is inserted to take care of the situation created because of the changes brought by the amendments to the Act of 1960 by the Maharashtra Act No. 16 of 2013 and this provision provides that the executive committees of the societies whose elections become due after 31st March, 2013 shall continue till the newly elected committee assumes office.

14. Reliance on behalf of the respondents on the judgment given by the Division Bench of this Court in the case of Chandralok ... Hs. Ltd. (supra) is misplaced as in that case the point which fell for consideration of the Court was whether the appointment of the Administrator without publishing notice as required by the first proviso below subsection (1) of Section 77A of the Act of 1960 was proper and whether the concerned authority was required to record satisfaction that appointment of Administrator was necessary because of expiry of the term of office of the executive committee. At that time the provision like subsection (4) of Section 166 of the Act of 1960 was not on the statute book.

15. The executive committee of the petitioner No.2society could not have been superseded on the ground that its term has expired, overlooking the fact that the State Government itself postponed the elections four months before the expiry of the term of the executive committee of the petitioner No.2society and giving a gobye to the provisions of subsection (4) of Section 166 of the Act of 1960 which confers a right on the executive committee to continue beyond its term till the new executive committee is elected/ constituted. Of course, the respondent No.2Divisional Joint Registrar could have exercised his powers under Section 77A of the Act of 1960 and superseded the executive committee, but for this it was necessary for him to comply with the mandatory requirement of first proviso below subsection (1) of Section 77A of the Act of 1960 which is admittedly not done in the present case. The notice as required by the first proviso below subsection (1) of Section 77A of the Act of 1960 could have been dispensed with as laid down under second proviso below subsection (1) of Section 77A of the Act of 1960 and this was permissible only after the Registrar recorded his satisfaction that immediate action was required to be taken or it was not reasonable and practicable to publish the notice. In the present case, urgency which is pointed

out for not complying with the first proviso of subsection (1) of Section 77A of the Act of 1960 is that the term of the executive committee expired. As recorded earlier, the executive committee could not have been superseded on the ground that its term expired and therefore, the action taken by the respondent No.2 is illegal.

16. The above conclusions show that the respondent No.2 Divisional Joint Registrar has acted illegally and contrary to the provisions of Section 166(4) of the Act of 1960 and Section 77A(1) of the Act of 1960. Therefore, preliminary objection raised on behalf of the respondents and the interveners that alternate statutory remedy is available to the petitioner under Section 152 of the Act of 1960 is overruled.

17. In view of the above, following order is passed : i) The impugned order issued by the respondent No.2 Divisional Joint Registrar on 17th October, 2016 is set aside. Consequently, the appointment of the respondent No.3 as Administrator to manage the affairs of the petitioner No.2 society is quashed. ii) The respondent No.3 is directed to forthwith hand over the charge of the affairs of the petitioner No.2 society to the executive committee of the petitioner No.2 society which was in the office when the impugned order was issued. Rule made absolute in the above terms. In the circumstances, the parties to bear their own costs. At this stage, the learned Government Pleader has prayed that the judgment be kept in abeyance for eight weeks to enable the respondent Nos. 1 and 2 to take appropriate steps in the matter. In my view, it would be appropriate that the respondent Nos. 1 and 2 should file proper application with this prayer giving reasons in support of the prayer. If such application is made, it will be considered on its merits.