

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WP-ASDB-LD-VC. 220 OF 2020

Rambujarat Ramraj Chaurasia,
r/at Vidhisha Shantiniketan CHS Ltd.
Opposite Shyamrao Vitthal Co-op Bank
Mira Bhayandar Road,
Mira Road West
Dist. Thane.

... Petitioner

v/s.

State of Maharashtra
Through Secretary
Department of Co-operative Housing soc,
Mantralaya, Mumbai.

2. Dy. Registrar, Thane Taluka, Thane
3. Divisional Joint Registrar, Co-operatives
Konkan Division, Navi Mumbai.
4. Shyamrao Vitthal Co-operative Bank
Through its Manager
Mira Road West Branch,
Mira Bhayander Road,
Mira Road, Dist. Thane.
5. Mr. Ramesh Mankar
r/at: Vidhisha Shantiniketan CHS Ltd.
Opposite Shyamrao Vitthal Co-op. Bank
Mira Bhayandar Road, Mira Road West.
6. Mr. Sachin Mhaprekar
c/o. Dy. Registrar, Co-operative
Department, Thane Taluka,

Thane, Dist. Thane.

7. Vidhisha Shantiniketan CHS Ltd.

Opposite Shyamrao Vitthal Co-op. Bank
Mira Bhayandar Road,
Mira Road West
Dist. Thane.

... Respondents

Mrs. Neeta Karnik alongwith Ms. Rita Vasudevan, advocate for the petitioner.

Dr. Mrs. Kirti R.Kulkarni, AGP for respondents 1-3 State.

Mr. Alok Sharma, advocate for respondent no.5.

**CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ**

RESERVED ON : 24th August 2020.

PRONOUNCED ON : 2nd September 2020

ORDER (Per Abhay Ahuja, J) :

Heard learned counsel for the parties.

2. Rule. Rule made returnable forthwith. With the consent of the counsel for the parties, this matter is being finally disposed.

3. This is a petition under Article 226 of the Constitution of India challenging the order dated 10.02.2020 passed by the Dy. Registrar, Thane, Taluka – Thane i.e. the Respondent No.2 directing the

Shyamrao Vitthal Co-operative Bank, Mira Road, Dist. Thane i.e. Respondent No.4 not to allow the Petitioner to operate the Society bank account and challenging the order passed by Respondent No.2 also directing Respondent No.4 Bank to permit the Administrator viz Respondent No.6 appointed by Respondent No.2 to operate the bank account of Viddhisha Shantiniketan CHS Ltd. i.e. Respondent no.7 Society.

4. This appears to be a dispute between the office bearers of the Managing Committee of Respondent No.7 Society, the Petitioner being the Chairman and an individual member Mr. Ramesh Mankar who is arrayed as Respondent No.5 in this petition, where Respondent No.2 and Respondent No.3 have passed successive orders including appointing/staying appointment of the Respondent No.6 as the Administrator of the Society.

5. It is submitted on behalf of Petitioner that the Managing Committee of Respondent No.7 Society under the Chairmanship of the Petitioner Shri Rambhujharat Ramraj Chaurasia had passed a resolution that Respondent No.5 has to pay penalty charges of Rs.22,000/-.

6. It is submitted that aggrieved by this decision the Respondent

No.5 member filed a complaint with the Respondent No.2, Dy. Registrar, contesting the amount. The Respondent No.2 vide his order dated 30.10.2018 directed the Respondent No.7 Society not to charge the amount of Rs.22,000/- imposed as penalty on Respondent No.5 and directed the Society to provide him with the revised bill. It is submitted that since no steps were taken in compliance of the said order, the Respondent No.5 filed another complaint after which the Respondent No.2 vide his order dated 14.03.2019 held that the Respondent No.7 Society is bound by the directions issued by its office and ought to have given Respondent No.5 revised bill after reconsidering the penalty amount of Rs.22,000/-. By this order, the Respondent No.2 directed the Petitioner to provide Respondent No.5 with the revised bill at the earliest and within 15 days from the date of the said order failing which the respondent no.2 would appoint an Administrator.

7. It is submitted that being aggrieved by the order dated 14.03.2019 of the Respondent No.2, Appeal No.41/2019 came to be filed by Respondent No.7 Society before the Respondent No.3, Joint Divisional Registrar.

8. Vide order dated 17.01.2020, the Respondent No.2 passed an order for appointment of Administrator to take charge of the Society.

It is submitted that by the said order, the Respondent No.2 dissolved the Managing Committee of the Respondent No.7 Society, stating that the Administrator is to be appointed to administer the Society and take charge of its day-to-day affairs including operating its bank account maintained with the Respondent No.4 Bank. By the said order, a penalty of Rs.5000/- was also imposed by the Respondent No.2 in view of the non-compliance of its earlier direction dated 14.03.2019 to furnish the Respondent No.5 with the revised bill within 15 days.

9. It is further submitted on behalf of the Petitioner that by order dated 22.01.2020, the Respondent No.2 allegedly, illegally, disqualified and debarred the Petitioner and other office bearers from contesting the elections and being re-appointed and/or co-opted for the next five years. It is the case of the Petitioner that this order of the Respondent No.2 Dy. Registrar is in breach of principles of natural justice as no notice was issued to the Petitioner and other office bearers to show-cause before passing such an order and that it is a totally illegal *ex parte* order.

10. Being aggrieved by the order dated 17.01.2020 dissolving the Committee and appointing an Administrator, the Respondent No.7 Society filed an appeal bearing No.3/2020 before the Respondent No.3 Divisional Joint Registrar, Co-operatives. The Respondent No.3

vide his order dated 04.02.2020 stayed the order dated 17.01.2020 passed by the Respondent No.2. It is submitted by the Petitioner that the Respondent No.2 wrote a letter to the Respondent No.4 Bank informing about the stay to the order dated 17.01.2020 passed by the Respondent No.3 and requested the Respondent No.4 Bank to unfreeze the accounts of the Respondent No.7 Society.

11. It is submitted by the Petitioner that despite the aforesaid order of the Respondent No.3 staying the order dated 17.01.2020 of Respondent No.2, the Respondent No.2 vide order dated 10.02.2020 held that the earlier Committee did not survive and directed re-appointment of Respondent No.6 as Administrator again.

12. It is submitted by the Petitioner that thereafter by letter dated 14.02.2020, the Respondent No.6 Administrator directed the Society to give charge of the Society in view of the 2nd Respondent's order dated 10.02.2020.

13. Aggrieved by the order dated 10.02.2020 of the 2nd Respondent Dy. Registrar, the Petitioner filed another appeal bearing No.14/20 under Section 152 of the Maharashtra Co-operative Societies Act, 1960 in which an order dated 09.03.2020 granting status-quo to the Petitioner was passed by the Respondent No.3. It is submitted that the

said protection was further extended till 30.03.2020 vide order dated 16.03.2020 and till 18.08.2020. It is submitted that the Petitioner has informed Respondent Nos.2,4 and 6 about the order of status-quo by letter dated 09.03.2020.

14. It is the case of the Petitioner that neither Respondent No.6 nor anybody from the 2nd Respondent's office have ever taken charge of the Society which fact is disputed by the Respondent No.2 as well as Respondent No.5.

15. It is submitted on behalf of the Petitioner that on 03.03.2020, the Petitioner's Appeal No.41/2019 challenging the order dated 14.03.2019 came to be heard and decided and by order dated 03.03.2020, Respondent No.3 quashed and set aside the 2nd Respondent's order dated 14.03.2019 where the Dy. Registrar had directed the Society to provide the Respondent No.5 with revised bill within a period of 15 days.

16. It is further submitted that Petitioner's Appeal No.3/2020 challenging the 2nd Respondent's order dated 17.01.2020 dissolving the Petitioner's Managing Committee and appointing Administrator came to be finally heard and vide order dated 20.05.2020 the Respondent No.3 allowed the Petitioner's appeal and quashed and set aside the 2nd Respondent's order dated 17.01.2020.

17. It is submitted on behalf of the Petitioner that despite the order of status-quo passed by the Respondent No.2 in Appeal No.14/20 challenging the order dated 10.2.2020 which is being continued from time to time and despite two appeals being allowed by Respondent No.3, the Respondent no.2 has illegally vide communication dated 14.07.2020 directed the Respondent No.4 Bank to allow the Respondent No.6 to operate the Society bank accounts. It is submitted on behalf of the Petitioner that it is in these circumstances that this petition has been filed to restrain Respondent Nos.2 and 6 from taking charge of the Society and its Bank accounts.

18. In support of his case the Petitioner has also annexed at Exhibit “K” to the Petition, affidavit dated 22.07.2020, purportedly of the Treasurer of the Respondent No.7 Society which *inter alia* states as under:

“5. I further say that on 08/03/2020 i.e. after passing of the said order of the status-quo the administrator i.e. respondent No.6 visited the respondent No.7 society and he forcibly tried to open the lock of the office of respondent No.07 hence we and our other society members of the respondent No.7 objected for the same and he could not take charge. He merely stuck a slip on the closed door of society office and went away. However the

said act being after the status-quo order being granted and communicated to the Respondent No.2 and 6 is patently illegal. That thereafter till today the said administrator i.e. respondent No.6 has neither taken charge nor visited the respondent No.7 society premises.

6. I further say that the respondent No.4 i.e. Bank has frozen the account of our society due to 10.02.2020 order being communicated passed by the respondent No.2. That inspite of status-quo to said order being informed the respondent No.2. is pressurizing the Respondent No.4 in to permitting Respondent No.6 to operate our bank account.

7. I further state that due to freezer of accounts of the respondent No.07 all the municipal taxes, light bills and other outgoings of the respondent No.7 are pending yet to be paid by respondent No.7.

19. We note that an affidavit-in-reply dated 07.08.2020 has been filed by the Respondent no.2. It is submitted that the Administrator was appointed by Respondent No.2 for the second time vide order dated 10.02.2020 as there was lack of quorum of the Managing Committee in view of the resignation etc. of two members and disqualification of four members out of a total Committee of ten members. It is further submitted that the Administrator i.e. Respondent No.6 has taken charge of the Society on 08.03.2020 under Kanakiya Police protection. The 2nd Respondent has annexed letter

dated 08.03.2020 and also the Roznama of charge taken as exhibits to his reply. It is submitted by the learned AGP, Dr.Kulkarni, that the 2nd Respondent's order dated 10.02.2020 appointing the Respondent No.6 to take charge as Administrator of the Respondent No.7- Society, was passed on 09.03.2020 in the Petitioner's Appeal No.14 of 2020 whereas the Administrator has taken charge on 08.03.2020 and, therefore, there is no violation of the order of *status-quo*. It is submitted that Appeal No.14/20 challenging order dated 10.02.2020 passed by Respondent No.2 was heard on 09.03.2020 (the said order has also been annexed to the reply) and that the Petitioner has informed Respondent Nos.2,4 and 6 about the said status-quo vide letter dated 09.03.2020.

20. We have also perused the affidavit filed by Respondent No.5. The relevant paragraph-3 of the said affidavit is quoted as under:

“3. The facts stated in the accompanying petition/ Misc. petition that

(a) On 4/9/2016 AGM of Vidhisa Shantinagar CHS was conducted

(b) On 10/9/2016 rough minutes was circulated in society

(c) In the minutes 22000/- Rs. fine was imposed on me stating reason that I lost case 3 times against the society which was untrue and no such point was in agenda nor discussed in meeting

(d) On 20/9/2016 Objection regarding this fine against me was raised by 33 members in writing to rectify the minute point.

(e) I Ramesh Mankar filed complaint against Vidhisha Shantiniketan CHS LTD for fine against 22,000/- dated 8/12/2016 & 17/01/2017

(f) Order in favour of me was passed for rectification of maintenance dated 30/10/2018

(g) The society contempt the order by Dy. Registrar which I reported to Dy. Registrar on 1/12/2018 & 31/01/2019 in writing

(h) Direction u/s 79(2)(A) was passed by Dy. Registrar dated 14/03/2019 for compliance of order dated 30/10/2018

(i) Order u/s 79(2)(B) was again issued by Dy. Registrar dated 5/7/2019 for non compliance of order dated 30/10/2018 in which Authorized officer Mr. Ganesh Lokhare was appointed.

(j) On 24/7/2019 Ganesh Lokhare reported non compliance of order due to non cooperation of society.

(k) Show cause notice u/s. 79(3) was issued by Dy. Registrar to society and final hearing was kept on 2/1/2020 in which officer bearers, their adv. Satnam Singh and complainant Myself were present

(l) Order u/s. 79(3) was issued by Dy. Registrar dated 22/1/2020 on office bearers for Rs.5000/- and suspension for 5 yrs.

(m) Order u/s 77(A) was issued dated 10/2/2020 as lack of corum (3- suspended and 2 ladies members resigned out of total 10 committee members) in which Sachin Moprekar was appointed as authorized officer

(n) Order u/s. 80 was issued due to non cooperation by society on letter dated 14/2/2020 given by Sachin Moprekar

(o) The charge of Vidhisha Shanti Nagar CHS LTD near Shyamrao Vitthal Co.Op. Bank, Mira Bhyander Road, Mira Road east, Thane 401107 has been done by appointed authorized officer Sachin Moprekar on 8/3/2020 under Kanakia Police protection same produced in joint Registrar office defense also and has been duly noted are true and correct to my knowledge derived from the record of the case and my personal knowledge.

(p) At present all regular activities of society are been conducted properly by authorized officer Mr. Sachin Moprekar including Banking.”

21. In rejoinder, it is submitted by the Petitioner that the Respondent No.2 as well as Respondent No.5 have falsely alleged that charge of the society was taken by the Administrator on 8th March 2020. It is submitted that the falsity of these averments becomes apparent as the Order passed under Section 80 of said Act, alleged to be passed on 14th Feb 2020 is obviously an impossibility. That the order dated 10 February 2020 under section 77 (A) cannot lead to a section 80 order being passed within 48 hours. Without prejudice it is submitted that if such an order be passed under section 80, the same would obviously be illegal due to denial of prior proper notice as also on the touchstone of principles of natural justice. It is further submitted that the society is suffering grave hardships due to it being unable to operate its bank accounts. It also submitted that the Respondent no.5 complainant is being criminally prosecuted for having fraudulently and illegally signed off precious development rights to society's property in favour of builder/developer illegally and that it is in such circumstances that he is incessantly filing complaints against office bearers with an ulterior motive that the society though in existence for the last 15 years should not function properly. In such circumstances it is prayed that the reliefs sought in this writ petition may please be allowed in the interest of law justice and equity.

22. Learned Counsel for the Petitioner, Mrs. Neeta Karnik, has also

painstakingly taken us through the relevant parts of the orders and the relevant sections of the Maharashtra Co-operative Societies Act, 1961 under which they have been passed.

23. During the hearing it was also clarified by learned counsel for the Petitioner that the order of status-quo passed in Appeal No.14/20 challenging the order dated 10.02.2020 directing re-appointment of Respondent No.6 Administrator in place of the earlier Committee has been passed on 09.03.2020 and not on 01.03.2020 as has been stated in the petition.

24. Having heard the learned counsel for the parties, we observe that this is a very hotly contested dispute between the office bearers of the Society on the one hand and an individual member of the Society on the other hand.

25. Since Appeal No.14/2020 filed by the petitioner challenging the order dated 10.02.2020 is still pending before Respondent No.3, we are not inclined to entertain this petition at this stage. However, all contentions are kept open.

26. In the interest of the Society and its members and that the day-to-day functioning of the Society is not hampered due to this dispute, we direct the Respondent No.3 to decide Appeal No.14/20

expeditiously within four weeks from today. In the meantime, the Society shall be jointly managed under the Chairmanship of the Petitioner and the Respondent No.6 Administrator only for day to day affairs including payment of municipal taxes, light bills and other outgoings of Respondent No.7 Society. All cheques of the Respondent No.7 Society to be jointly signed by Petitioner and Respondent No.6. The Respondent No.4 Bank is directed to unfreeze the account to allow the operation of account of Respondent No.7 Society as per our aforesaid direction. We make it clear that no major decisions will be taken till the disposal of the Appeal No.14/2020 pending before Respondent No.3. The order of status-quo dated 09.03.2020 passed by Respondent No.3 and the communication dated 14.07.2020 by Respondent No.2 stand modified to the above extent.

27. Before parting with the record, we would only say that co-operative societies are now part of the constitutional scheme as cooperative societies have been inserted in the Constitution of India as Part IX B by way of the Constitution (Ninety-seventh Amendment) Act, 2011 w.e.f. 15.02.2012. Therefore, co-operative societies should have the necessary space and autonomy to function and develop to its full potential. Interference in the affairs of cooperative societies should be avoided unless there is serious statutory breach or compelling necessity. We find it a bit perplexing that for a dispute having its

genesis in charging or billing of an individual shareholder member, drastic steps, such as, dissolution of managing committee and appointment of Administrator have been resorted to. Departmental authorities like Respondent No.2 are expected to maintain a certain degree of restraint while taking such decisions, more so when the appellate authority is in seisin of the matter. We hope appellate authority will look into all these aspects. We say this and no more.

28. The Petition is accordingly disposed of in the above terms. No order as to costs.

29. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J)

(UJJAL BHUYAN, J)