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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO. 12214 OF 2023

Reuben Alphonso & Ors.

.. Petitioners

Versus

State of Maharashtra & Ors.

.. Respondents

.....

. Mr. Nigel Quraishy a/w Mr. Dushyant Krishnan for Petitioners

. Mr. Milind More, Addl. G.P for Respondent Nos. 1 to 3

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 22, 2023

JUDGMENT:

1. Heard Mr. Quraishy, learned Advocate for Petitioners and Mr. More, learned Addl. G.P for Respondent Nos. 1 to 3.

2. This Petition is filed under Article 226 of the Constitution of India taking exception to an order dated 06.04.2023 passed by Respondent No. 3 - Deputy Registrar Co-operative Societies disqualifying three freshly elected members of the Managing Committee for a period of five years by accepting the inquiry report under Section 83 and 88 of the Maharashtra Co-operative Societies Act, 1960 (for short "**the said Act**") but without giving any reasons.

3. Briefly stated the facts are outlined herein under:-

3.1. Petitioner Nos. 1, 2 and 3 are members of Kendwell Co-op. Housing Society Ltd who are duly elected in the election held by the Returning Officer on 18.01.2023 and declared as office bearers on 10.02.2023. Grievance in the Petition is that Respondent No. 4 appointed as Administrator in 2021 has still continued as Administrator of the Society. Serious complaints and averments against the Administrator are made in the Petition which are adverted to later.

3.2. Three Petitioners along with 5 other Managing Committee Members were appointed as the elected Managing Committee after conducting elections in the month of January 2021 but before they could take charge of the society affairs from the existing Administrator, they were disqualified by order dated 06.04.2023 resultantlty leading to the society being managed by the Administrator. The facts of this case are such which call for interference by the Court. After perusing the pleadings and annexures to the Writ Petition, a clear impression is conveyed that on some pretext or the other, the elected Managing Committee will not be allowed to run the affairs of the society and the Administrator should keep on continuing to manage the affairs of the society and play havoc with the funds of the society as complained by the Petitioners.

3.3. It is seen that during the Covid period on 09.11.2020 Respondent No. 3 issued a show cause notice under Section 77 of the said Act to the society. The society represented by the Petitioners, who are its ex-office bearers filed a detailed reply on 01.12.2020 along with all supporting documentary evidence in response to the said show cause notice but without hearing the society or even considering its reply the Respondent No. 3 passed an order on 22.12.2020 under Section 77A of the said Act directing the Administrator to take charge of the Society. In view of this order, on 21.01.2021 when a hearing was scheduled before the Respondent No. 2, Appellate Authority against the order of appointing the Administrator, the Respondent No. 4 Administrator came on to the premises of the society along with police force and took charge of the society. On the same date i.e. 21.01.2021 Appellate Authority granted an order of *status quo* permitting the Petitioners to file their say. This order of *status quo* is flouted by the Administrator. However on 02.02.2021 the Respondent No. 2 admitted the appeal against the appointment of Administrator but rejected the interim stay resultantlty compelling the Petitioners to rush to this Court by filing Writ Petition (St) No. 3960 of 2021. In that Writ Petition, this Court restored the *status quo* order and listed the Petition for hearing on the next date but despite that order the Respondent No.4 Administrator who had taken charges of the society

with the help of the police remains in charge of the Society from that date till today by flouting this Court's order.

3.4. Thereafter for a period of two years despite the Petitioners pursuing the office of Respondent Nos. 2 and 3, elections were not held until January 2023. The process for conducting the election of the society commenced in June 2022 and when it was underway a fresh notice was issued to the Petitioners (being ex-office bearers of the Society) under Section 83 of the said Act on 19.09.2022 alleging and imputing upon details of certain expenditure incurred for the society repairs and maintenance. In this notice, it was alleged that society had spent Rs. 15,00,000/- for repairs during the period 2018 to 2020 by appointing one M/s. Pride Consultant and an amount of Rs. 5/- Lakhs was withdrawn from the society fund for repairs without permission from the Sub-Registrar and an amount of Rs. 6000/- and Rs. 25000/- were spent for repair of the society compound / campus wall thereby causing loss to the society. The above inquiry and the election of the society took place simultaneously. Petitioners being the erstwhile office bearers for the period 2018 to 2020 filed a detailed reply to the show cause notice for inquiry on 03.10.2022. It is seen that without considering the reply of the society to the inquiry a notice dated 18.11.2022 was issued under Section 88 without even hearing the society or the Petitioners. This was followed by a second notice

dated 18.12.2022 without giving any particulars about the venue or status of the inquiry.

3.5. It is next seen that without hearing the Petitioners or the society on 09.01.2023 report was filed by the Inquiry Officer without hearing the Petitioners or without serving upon them the copy of the order dated 16.11.2022 based upon which the notice under Section 88 was issued on 18.11.2022.

3.6. As referred to above, election of the society concluded on 20.01.2023 and the Managing Committee was formed which included the three Petitioners before me and five other office bearers as Committee Members. At this stage it needs to be stated that the society comprises of 15 members only. From January to April 2023 it is seen that the Administrator did not deliberately hand over the charge / affairs of the society to the newly elected Managing Committee and merely waited till the 3 Petitioners were disqualified for 5 years by the impugned order passed on 06.04.2023. Averments in paragraph Nos. 38, 39, 40, 41 and 42 are extremely serious. It is stated that the Respondent No. 4 Administrator was withdrawing amounts from the saving bank account of the society maintained in Respondent No. 7 Bank for his own benefit despite the newly elected office bearers of the society having been appointed and has caused financial loss to the society which is evident from the bank statements

produced at Exhibit P at page Nos. 229-230. On perusal of the statement at page Nos. 229 and 230 of the Writ Petition, it is seen that there are at least five direct entries of withdrawal of cash in the name of the Administrator of Rs. 2079/- Rs. 1465/-. Rs. 3000/-, Rs. 3000/- and Rs. 2000/- between 09.01.2023 and 09.03 2023. That apart it is further seen that several cheques have also been issued during the said period by the Administrator towards expenses and to third parties which are substantial.

3.7. Be that as it may it is seen that despite the order passed by this Court in Writ Petition (St) No. 3960 of 2021, restoring the *status quo* order in the Writ Petition filed by the society, the Respondent No. 4 still took charge of the society affairs disregarding the order of the Court. Further it is seen that the society has in its reply to the show cause notice furnished plausible explanation to the Competent Authority. It is next seen that the Society comprises of 15 members only. I have perused the pleadings and it is seen that the amount of Rs. 15/- Lakhs was spent by the society for structural audit and repairs of the society building by following the due procedure of law. Before spending the said amount notice of the meeting calling for Special General Meeting (SGM) was given on 07.12.2018. SGM was held on 16.12.2018. Resolution to appoint M/s. Pride Consultant as structural auditor and supervise the entire project including tender

processing was passed on 16.12.2018 and final structural audit report was distributed to all members with the marking of each flat where there was damage and where it needed structural repairs. Thereafter on 17.02.2019 another SGM was held wherein by a majority decision budgeting of Rs. 15 Lakhs was passed for the structural repairs of the building wherein the approved quotation of the contractor appointed was Rs. 11.98 Lakhs with GST and 10% additional cost was agreed unanimously. It is seen that despite the above, two disgruntled members of the society being occupants of flat Nos. 12 and 13 complained to the Registrar upon which the impugned action was taken.

3.8. In so far as the issue of withdrawal of Rs. 5/- Lakh is concerned, it is seen that resolution dated 24.02.2019 was passed and approved by 11 out of 15 members of the society and therefore once that was done, seeking permission from the Sub-Registrar was not required when 2/3rd majority had approved the resolution in the interest of the society. It is seen that occupiers of flat Nos. 12, 13 and 15 had in fact approved this resolution.

3.9. In so far as the breaking of the wall i.e. campus wall is concerned, it is seen that the SGM permitted the repairs of the wall by resolution dated 02.09.2018 which was proposed by occupant of flat Nos. 5, seconded by occupant of Flat No. 13 and was passed

unanimously by 8 out of 15 members. It is further seen that in order to restore this wall only two office bearers had borne the entire expenses from their respective pockets without causing any financial loss to the society.

3.10. Next in respect of the dispute of eligibility of occupant / owner of flat No. 3, it is seen that since 1991 he has been residing in the said flat and share certificate has been issued to him by the Society on 01.08.1996 and this is to the knowledge of all members since he has served as an office bearer of the Society on various occasions unopposed.

4. Mr. Quraishy, learned Advocate for Petitioners would submit that the 83/88 inquiry has been initiated by the Respondent No. 3 on the aforementioned four issues only against the society despite there been clear answers to the same. However without considering those answers the Respondent No. 4 Administrator is being continued in the society to the detriment of the society. He would submit that due to the complaint made by Respondent No. 8 i.e. Sunein Gidwani occupant of Flat No. 13, the present action has been invoked. Mr. Sunein Gidwani is present in person before me and I have heard him also. It is seen that in the body of the eight newly elected office bearers he is also elected as an office bearer of the Managing Committee. It is a sorry state of affairs that instead of

working together, complaints are filed on issues which have all the answers.

5. In the facts which are narrated herein above there is no reason as to why the Administrator should continue to manage the affairs of the society any further. In so far as the issue of inquiry is concerned, it is also seen that how the principles of natural justice are not followed by the Statutory Authorities despite the Petitioners having placed the material evidence on record.

6. On 10.02.2023 the Returning Officer has published the result of election of the Kendwell Co-operative Housing Society Limited which is at Exhibit - J page 101 of the Petition. In that list it is seen that eight members have been elected for a period of five years. Out of these the President – Mr. Alphonso Ruben John, Treasurer - Mr. Pereia Kenneth Ostin and Committee Member – Melwani Sheela are the Petitioners before me whereas one of the complainant Mr. Sunein Ishwar Gidwani is Respondent No. 8 before me. Mr. Sunein Gidwani is also the elected Committee Member. Thus it is seen that Secretary Mr. Pinto Remand Alex and Committee Members Ms. Shroff Sangita Yatin and Mr. Pinto Marlin are three members of the elected Managing Committee who can be considered to constitute a Board for running the affairs of the society until the inquiry initiated under Sections

83/88 is completed by the Statutory Authority against the Petitioners at the behest of the Respondent No.8.

7. In view of the above observations and findings, the impugned order dated 06.04.2023 is quashed and set aside with the following directions:-

- (a) A Board of four Managing Committee members comprising of Pinto Raymond Alex, Pereira Savio Anthony, Shorff Sangita Yatin and Pinto Marlin shall administer the affairs of the 15 member Kendwell Cooperative Housing Society for a limited period of four months from today;
- (b) The impugned order dated 06.04.2023 is quashed and set aside and the order appointing the Administrator is also quashed and set aside;
- (c) Respondent No.4 i.e. the Administrator shall handover immediate charge of all the records of the society to the four members of the Managing Board appointed by this Court to run the affairs of the society;
- (d) The secretary Pinto Remand Alex, Ms. Shorff Sangita Yatin and Mr. Pinto Marlin shall be the authorized

signatories of the Society for the purpose of all banking relations and affairs of the Society in the interregnum;

- (e) The banker of Kendwell Co-op. Hsg. Society Ltd shall take cognizance of this order and immediately remove the authority of the Administrator and include the names of the aforementioned three office bearers to run the affairs of the society and sign the cheques etc. as directed by this Court;
- (f) In view of setting aside of the order 06.04.2023, inquiry under Sections 83 and 88 shall be conducted afresh by the Respondent No. 2 and /or Respondent No. 3 and the Petitioners herein along with the Board appointed by this Court today shall both be heard jointly by the said Authority and their response and reply to the allegations of expenditure levelled against the Petitioners and the erstwhile Society shall be heard, adjudicated and decided by the Respondent No.3 afresh within a period of four months from today;

- (g) If the original Complainant i.e. Respondent No.8 herein desires to appear before the Respondent No. 3 in the above inquiry conducted afresh, he shall be permitted to do so by the Respondent No. 3;
- (h) After hearing the Petitioners and the Board appointed, a reasoned order shall be passed and in the event if the reasoned order is against the Petitioners or the erstwhile Managing Committee Members, the same shall be held in abeyance for a period of four weeks after it is passed to enable the Petitioners to take appropriate recourse to law and the remedy of filing Revision / Appeal;
- (i) Needless to state that all contentions of the parties are expressly kept open;
- (j) It is clarified that if the explanation given by the Petitioners and the erstwhile Managing Committee of the society is accepted by Respondent No. 3 / Competent Authority, the Petitioners before me along with Respondent No. 8 who is the original Complainant shall then be inducted in the Managing Committee as elected on 10.02.2023 and the entire

quorum of eight Managing Committee Members thereafter shall govern the affairs of the society for the remainder of their tenure in accordance with law;

(k) It is further clarified that before hearing the Petitioners, the copy of any complaint received against them shall be given to the Petitioners by the Respondent No. 3 / Statutory Authority so as to enable the Petitioners to deal with the same within 15 days from the date of uploading of this order and a demand being made by the Petitioners from the Respondent No.3 / Statutory Authority. Petitioners are also permitted to file any additional affidavit, reply and / or submissions before the Enquiry Authority and the Authority shall receive the same.

8. With the above directions, Writ Petition is disposed.

Amberkar

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by RAVINDRA
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[MILIND N. JADHAV, J.]