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IN THE COURT OF JUDGE CO-OPERATIVE COURT NASHIK

(BEFORE SHRI U.M.KULKARNI)

A.B.N. Case No-271/2025

Clera Moraiyas & others

:- Disputants

Vs.

Amlyn Co-op. Housing Society Ltd & others

:- Opponents

Order Below Exh 5

This is the application filed by disputants for temporary injunction.

Briefly stated the case of disputants is as under,

1. It is contended that the opponent No 1 is a registered co-operative housing society under the provisions of MCS Act 1960 and the disputants are its members. The disputant No 1 was the secretary and the disputant No 2 was the director. The functioning of the society was regular. The audit of the opponent society for the period 2023-2024 has been conducted and in the audit the names of committee members are mentioned. The special general meeting of the opponent society was held on 28/02/2021. Therefore there was no reason to hold any election before the said date. The managing committee of the opponent society was elected for the tenure 28/02/2021 to 28/2/2026. In the circumstances the letter dated 2/7/2025 given by the Taluka Deputy Registrar cum Taluka Co-op. Election officer, is totally illegal and improper. The alleged election conducted for the period 2025 – 26 to 2029 – 30 and the notification issued in that regard on 25/6/2025 is also totally illegal and improper.

2. It is further contended that on 02/07/2025 the Deputy registrar cum Taluka election officer has given letter to the disputant's and in the said letter it was informed that the election of opponent society is held and notification of the election result has also been

((2))

published on 25/6/2025, which is illegal. The present managing committee had declared the election program for the election of opponent society for the term 2025 – 26 to 2029 – 30 and also the unopposed election result. In fact no election has been conducted nor any election program was published. It is submitted that the opponents no 2 to 4 are alleged to be elected. The said opponents were the defaulters and thus not eligible to be elected as a director's. It is submitted that the present dispute is filed to declare the election of opponents no 2 to 4 as illegal and to restrain them from working as its directors. The disputants have good case on merits. The election of opponents is totally illegal. The disputants have guarantee of success in the matter. The opponents are not eligible to work as a director's of the opponent society and therefore it is necessary to restrain them from acting as such.. Accordingly with these contentions the disputants have lastly prayed for allowing the application and granting temporary injunction against opponents no 2 to 4 restraining them from taking part in the day-to-day business of the opponent society and also from doing any financial transactions of the opponent society.

3. On show cause notices of this application the opponents have appeared in the matter and filed their say at Exhibit 20. They have denied every allegation of disputants contending same as false, frivolous and unfounded. The opponents have contended that the opponent no 1 is a registered co-operative Housing Society and there are 12 flats and 12 members. On 14/1/2002 the general meeting of the said society was held and the office bearers were elected. Accordingly Shri Ronald Moraya's the then secretary was issued letter dated 15/2/2002 by the Taluka Deputy registrar for delivering record of the society. Thereafter for some days the disputant no 1 has worked as a secretary however her work was improper and was unnecessarily harassing the members and therefore the husband of opponent no 2 Shri Rakesh Kumar had given police complaint to police station Nasik Road and requested for taking appropriate action against disputant. In spite of that the disputant no 1 continued her illegal acts and therefore said Rakesh Kumar and other 7

((3))

members had given letter to disputant no 1 and requested for delivering Keys of the terrace and electric motor shed. The copy of said letter was also given to the police station Nasik Road. Therefore due to improper and whimsical conduct of the disputant, on 24/8/2008, the opponent society had called the meeting and in the said meeting the society had decided to give letter to the Taluka Deputy Registrar for electing Shri Daniel K Shinde as a Chairman, Luis Rajnaigam as a secretary and Saroj Erolkar as a treasurer. Accordingly by holding meeting on dated 6/10/2008 by the directors, resolution was passed for holding the election and accordingly on 7/10/2008 the meeting was called and in the said meeting the directors were elected as a chairman, secretary and treasurer respectively. Thus the new board of directors cum managing committee came into existence.. In spite of that the disputant No 1 though not holding any post, obtained maintenance amount of Rs 1 to 1.5 Lacs from the members and utilized the said amount for herself and therefore the then office bearers and members of the opponent society had given police complaint at Nasik Road police station and requested for taking action and also for directing to hand over the charge of the society to the new directors. After election of the new directors the deputy registrar had given letter to the district co-operative bank on 17/11/2008 for doing the bank transactions and accordingly the transactions were going on. On 19/11/2008 the specimen signatures were obtained. It is submitted that though the new office bearers were elected as per rules, the disputant no 1 adamantly continued to work as a secretary illegally but refused to give the accounts and therefore on 4/3/2009 police complaint was made to Nasik Road police station and also to the police Commissioner 9/9/2009. So also the then office bearers had also made a complaint against disputant no 1 to divisional joint registrar co-operative societies Nasik by giving particulars of the incidents. Thereafter 11.07.2010 the office bearers of the opponent society had made a complaint to senior police inspector Nasik Road police station. Thereafter on 12/8/2010 all the members have made complaint against disputant to the deputy registrar CS Nasik. In spite of that the disputant No 1 had issued false legal notice through her advocate G.A. Lobo to the then office bearers which

((4))

was duly replied by them on 5.10.2010. Thereafter the then secretary of the opponent society had made correspondence with Commissioner Nasik municipal Corporation regarding disputant no 1. In spite of all that the disputant No 1 continued to work as self-declared secretary and therefore to counter blast her said act, the office bearers of opponent society on 11/11/2010 had given complaint against disputant to the police Commissioner Nasik. So also the members of the opponent society had filed a complaint to deputy registrar CS Nasik on 14/2/2011 since the disputant no 1 had not delivered record of the society. In spite of that, she illegally continued to work and therefore the opponents and other members of the society have started the work through the elected members of the society. Accordingly by collecting contribution from the members, the working of the society was continued and from the amounts collected all the facilities were / are provided to the members and that is available on the record of the society. In that situation also the disputant no 1 continued to work as self-declared secretary and got conducted false audit of the opponent society and shown illegal amounts as outstanding from the members and the opponents. From some members amounts have been recovered forcefully and in that regard since last 16 to 17 years the dispute was going on between the disputants and other members. Therefore on 10/7/2024 the opponents and some other members of the opponent society have made application to the taluka deputy registrar CS Nasik and requested for holding election and accordingly given letter on 18/7/2024 for declaring the election. Accordingly the said registrar issued letter to the opponent society calling upon it to submit to him the information in form E-1 within one month and accordingly as per application dated 10/7/2024, he gave letter to the manager of Nasik Road credit Society for not doing further transactions on the account of opponent society until further directions. As per letter dated 10.07.2024 the hearing was conducted on 25.02.2025 and accordingly after hearing the members, the deputy registrar CS Nashik has disposed of the application on 17.03.2023 by recording reasons and concluded that the election will be held as per rules. Accordingly the Taluka deputy registrar had appointed

HA

((5))

Shri Atul Chindhu Choudhari the certified Auditor as a returning officer vide his order dated 09.04.2025 and accordingly the said R.O. had issued letter to the secretary of opponent society on dated 14.05.2025 for displaying the preliminary voters list. Thereafter on dated 05.05.2025 the opponent society had issued letter to the R.O for supplying the members list. Accordingly on dated 14.05.2025 the members list was displayed on the notice board and thereafter on 31.05.2025 the R.O. had published the election program. Accordingly thereafter on 09.06.2025 the list of nominations was published in which there was reference of the names of opponents No 2 to 4. After scrutiny the list of valid nominations was also published. The list of contesting candidates was published on notice board on 16.06.2025. However since the number of nominations were equal to number of posts to be filled, the election result was declared unopposed on 22.07.2025. Accordingly the letter was given to opponent No 5 and also the opponent society and accordingly thereafter on 25.06.2025 the opponent No 5 had issued the notification thereby declaring the election of 6 candidates on the committee of opponent society. Accordingly thereafter the program for electing the chairmen and other officers was declared on 26.06.2025 and accordingly thereafter in the meeting dated 01.07.2025 the office bearers were elected and accordingly thereafter the R.O had issued letter on dated 02.07.2025 to the opponent No 5 about election of the office bearers and thus the election process was completed and the office bearers were elected i.e. the opponents No 2 to 4 as chairmen, secretary and treasurer respectively. During said election process no objection was raised by disputants No 1 & 2. On 04.07.2025 by passing resolution it was decided to restart the bank account of the society in the Nasik Road credit Society and accordingly letter was given to the deputy registrar co-operative societies Nasik on 07/07/2025. So also on 15/07/2025 the latter was given to disputant no 1 for delivering record of the society. Thus after conducting the election of opponent society in lawful manner the opponents No 2 to 4 are elected as chairman, secretary and treasurer respectively and thereafter their such election was notified on 25/6/2025. Therefore the application filed by disputants claiming temporary

12

((6))

injunction against the opponents is illegal and fit to be rejected. The disputant No 1 has illegally worked as self-declared secretary and conducted the work whimsically and made physical and financial harassment of the members. The dispute filed by disputants itself is not legally tenable. It has been filed only with intention to harass the opponents by maintaining anger in the mind by disputants. Therefore application is liable to be rejected. Accordingly with these contentions the opponents have lastly prayed to reject the application with heavy cost.

4. In the light of rival contentions of the parties and the submissions made by both sides learned Advocates, following points arise for my determination and I have recorded my findings they're on for the reasons recorded as under,

Points

Findings

- 
1. Whether the disputants have made out prima facie case ?
 2. Whether the balance of convenience is lying in their favour ?
 3. Whether disputants will suffer irreparable loss if temporary Injunction as prayed by them is not a granted against the opponents No 2 to 4 ?
 4. What order ?

In the Negative.

In the Negative.

In the Negative.

As per final order.

R E A S O N S

5. As to Points No 1 to 3 :- The Leaned Advocate for disputants Shri S.G.Sonawane submitted that as per the general election of the opponent society held on dated 28.02.2021, five committee members were elected. The said election was held for 5 years tenure i.e. from 28.02.2021 to 28.02.2026 and therefore there was no reason to hold any election by opponent society before 28.02.2026. However as per letter dated 02.07.2025 issued by the taluks co-operative election officer cum DRCS Nashik the election of opponent society is conducted / held on 22.06.2025 and the result of said election is also

declared unopposed on 23.06.2025. The learned Advocate submitted that the said letter itself is illegal because as mentioned in said letter neither any election of opponent society was / is held on 22.06.2025 nor any election program was declared or any voting took place and therefore the so called election of opponents No 2 to 4 as mentioned in the said letter itself is illegal. The disputants are office bearers of opponent society. The opponents have no right to work as office bearers of opponent society nor they are elected. They can't do any financial transactions of the said society and therefore they are liable to be restrained by order of injunction from doing so otherwise the disputants will suffer irreparable loss. The learned advocate therefore argued for allowing the application.



6. Per contra the learned Advocate Shri S.D. Jawale for the opponents submitted that the election of opponents no 2 to 4 as an office bearers of the opponent society is lawful and they are elected as per election rules. He argued that the disputant No 1 is not the elected office bearer but she is self-declared secretary and thus she has no right to work on the said post. He argued that the Taluks co-operative election officer cum deputy registrar CS Nasik by his order dated 09/4/25 had appointed the returning officer for conducting the election of the opponent society and accordingly on 09/06/2025 the returning officer had declared election program,. The preliminary and final voters list was published on the notice board of the society. So also the election program was also displayed on the notice board of the society specifying the stages of the election and accordingly on 22/6/2025 the election was held and the election result was declared unopposed and in the said election total 6 committee members including the opponents no 2 to 4 are elected and thereafter the opponents No 2 to 4 are elected as an office bearers i.e. chairmen, secretary and treasurer respectively and thus the election of opponents on the opponent society is totally legal and therefore they cannot be restrained by order of injunction compunction as an office bearers. The disputants have no case on merits. Therefore the application be rejected with cost.

((8))

7. Thus the principal contention of disputants seems to be that, in fact no election of the opponent society was / is held on 22/6/2025 as mentioned in the letter dated 2/7/2025 issued by the returning officer and thus the said letter itself is illegal. It is their contention that once the election of opponent society was held on 28/02/2021 for the period of 5 years then there was no reason to hold any election prior to 28/6/2026 and thus the opponents are not elected members and hence they cannot be permitted to act as office bearers of the opponent society. To substantiate their said contention the disputants have relied upon the xerox copy of minute book of the alleged special meeting of the opponent society held on dated 20th Feb 2021. This copy of the minute book mentions that on 28th February 2021 special meeting of the members was held to elect the office bearers of the new committee and accordingly the said minute book further proceeds to mention that for the said election since no nominations were received, 5 committee members are elected unanimously. The said minute book further proceeds to mention that in the said meeting from amongst the said 5 committee members two members are elected as Chairman and secretary respectively and the said committee will work for a period of 5 years i.e. up to 28th February 2026. Furthermore the xerox copy of audit report of the opponent society for the period from 1/4/2023 to 31/3/2024, more particularly, page number 15 thereof, shows that as on 31/3/2024 there is board of 5 directors on the opponent society and on the said board the disputant No 1 is a secretary and the disputant No 2 is one of the director. Except these 2 documents no other documents are produced by the disputants. The copy of minute book as referred above though mentions that the election of office bearers was held on 28th February 2021 but at the same time it does not mentions as to when the general election to elect the committee members was held. More over the said minute book is a Xerox copy. Furthermore the disputants have not produced on record the bye-laws of the opponent society to show that the managing committee for the opponent society was

to be elected in the special meeting of the members called for the purpose. Therefore it is difficult to rely on said document i.e. the xerox copy of minute book at this juncture.

8. On the contrary the copies of documents produced by opponent's along with list Exhibit 23, shows that by submitting letter to the deputy registrar CS Nasik on dated 10th July 2024 the members of the opponent society had complained against disputant No 1 and prayed for removing her from the post of secretary. Furthermore, it appears that on 18/7/2024 again the members of opponent society had submitted letter to the deputy registrar CS Nasik thereby requesting to hold the election of the society. It appears from the documents that thereafter 24/7/2024 the deputy registrar CS Nasik had given letter to the chairman / secretary of the opponent society thereby calling upon him to submit to him the information in form E as required. It further appears from the documents that by giving letter dated 17/3/2025 to the manager of Nasik Road co-operative credit Society, the Taluka deputy registrar CS Nasik had prohibited the said society from allowing transactions on the account of the society. Furthermore from the documents produced by opponent's it appears that as per letter dated 09/4/2025 issued by the Taluka co-operative election officer to the chairman / secretary of opponent society, it was informed that as per provisions under Maharashtra co-operative societies election to committee (amended) rules 2019, Shri Atul Choudhury is appointed as a returning officer for conducting election of the opponent society. Thereafter it appears that the said returning officer had given letter to the Secretary of opponent society for displaying the program of voters list on the notice board of society on dated 14/5/2025. It appears that the provisional voters list was accordingly submitted to the returning officer by the secretary. Thereafter it appears that the said provisional voters list was finalized and published on notice board on 31/5/2025. It further appears from the documents that thereafter on 09/6/2025 the returning officer had displayed on the notice board of the opponent society the list of nominations received and thereafter he had displayed the election program of the opponent society.. It further

((10))

appears that from the nominations as received, after making the scrutiny there of, the final list of valid nominations was published on the notice board of the society on 16/6/2025. Furthermore on perusal of the copies of documents it appears that thereafter on 22/6/2025 the returning officer had declared the election results as unopposed in which he declared that total 6 committee members, including the opponents no 2 to 4 are elected on the committee of opponent society. Accordingly thereafter on 25/6/2025 the said election was notified by the Taluka deputy registrar CS Nasik. Thereafter it appears that as per the instructions of the presiding officer of the meeting, the secretary had declared the election program for electing the office bearers of the opponent society and accordingly in the managing committee meeting dated 02/7/2025 the office bearers of the opponent society were elected in which the opponent no 2 was elected as Chairman, the opponent no 3 as a secretary and opponent no 4 as the treasurer of the opponent society. Therefore on perusal of aforesaid copies of documents produced by opponent's it prima facie appears that the opponents no 2 to 4 are elected as a managing committee members and office bearers of the opponent society as per the election held and conducted on dated 22/6/2025 by the returning officer appointed for the purpose by the election authority as per the election rules. Therefore the contention of the disputants that no election at all was took place in the opponent society on 22/6/2025, prima facie cannot be accepted. It prima facie appears that the opponents are the elected committee members of the opponent society. It is well settled legal position that unless their such election is set aside by a competent court, they cannot be restrained by an order of injunction from functioning as a committee members. They if restrained so will suffer an irreparable loss and that will be against the democratic principles. The disputants at this juncture prima facie failed to prove that at present they are the office bearers cum committee members of the opponent society. In the circumstances I have to told that the disputants no prima facie case at this juncture. The balance of convenience is also not lying in their favour. So also the disputants would not suffer any irreparable loss if the temporary injunction against

((11))

opponent's as prayed by them is not granted. The disputants thus are not entitled to get the relief of temporary injunction against the opponents. Therefore with this discussion I record my findings on points no 1 to 3 in the negative manner and in answer to point No 4 in the result I proceed to pass the following order,

ORDER

1. The application for temporary injunction stands rejected.
2. There is no order as to cost.

Date :-08/06/2026


(U.M.Kulkarni) 8/6

Judge

Co-op. Court Nashik