

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 763 OF 2015

National Cooperative Housing Society Ltd,
 Survey No. 118-124, Aundh,
 Pune 411 007.
 Through its Honorary Secretary,
 Shri. Ashok Mahan Cairae,
 Age 71 years, Residing at 19, Natmal
 Housing Society, Baner Road, Aundh,
 Pune 411 007.

...Petitioner

~ versus ~

1. **The State of Maharashtra,**
 (Summons to be served on the
 Learned Government Pleader
 appearing for State of Maharashtra
 under Order XXVII, Rule 4 of the Code
 of Civil Procedure, 1908).
2. **The Secretary,**
 Cooperative & the Textile Department,
 Government of Maharashtra,
 Mantralaya,
 Mumbai 400 032.
 (Summons to be served on the
 Learned Government Pleader
 appearing for State of Maharashtra
 under Order XXVII, Rule 4 of the Code
 of Civil Procedure, 1908).
3. **Divisional Joint Registrar Cooperative
 Societies,**
 Sakhar Sankul, Shivaji Nagar,
 Pune 400 005.

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(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4 of the Code of Civil Procedure, 1908).

4. **The District Deputy Registrar,
Cooperative Society,,
Sakhar Sankul, Shivaji Nagar,
Pune 400 005.**

(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4 of the Code of Civil Procedure, 1908).

5. **Shri Vishal Kataria,**
Age: Adult, Occ.: Advocate,
Residing at 315 & 317, Sindh Colony,
Aundh,
Pune 411 007.

6. **Shri Prakash B Kataria,**
Age: Adult, Occ.: Medical Practitioner,
Residing at 315 & 317, Sindh Colony,
Aundh,
Pune 411 007.

...Respondents

APPEARANCES

For the Petitioner	Mr Anil Anturkar, Senior Advocate, with Kashish Chelani & Sugandh Deshmukh.
For Respondents-State	Smt Ashwini A Purav, AGP
For Respondents Nos. 5 & 6	Mr Abhishek Pungalia.

**CORAM : SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ**

RESERVED ON : 15TH OCTOBER 2025.
PRONOUNCED ON : 19TH NOVEMBER 2025.

JUDGMENT (Per Suman Shyam, J):-

1. This Writ Petition preferred by the National Cooperative Housing Society Limited is directed against the order dated 6th September 2014 passed by the Divisional Joint Registrar, i.e., Respondent No. 3 here-in dismissing the Appeal preferred by the Petitioner against the Order dated 1st April 2013 passed by the Deputy Registrar, Cooperative Housing Societies, i.e., Respondent No. 4 thus, confirming the said order, on the grounds stated herein. The facts of the case, in a nutshell, are as follows:

- (a) The Respondent No. 5 herein viz, Vishal Kataria as the primary member, had purchased Plot No. 17 in the Petitioner Housing Society along with his father, i.e., Dr. Prakash B Kataria i.e. Respondent No. 6 from the legal heir of the original owner R. Sequiera. The Petitioner-Society is a tenant-ownership type Society which owns plots which are leased out to the members. Mrs Sequiera i.e. the legal heir of the original owner had executed a registered Deed on 17th

June 2006 transferring the right over her plot in favour of Respondents Nos. 5 and 6. Accordingly, a Lease Agreement was executed by and between the Society and the Respondent No 5 on 17th July 2006. Prior to execution of the Lease Agreement dated 17th July 2006, a sum of Rs. 10,71,000/- (Rupees Ten Lakhs Seventy One Thousands) was deposited as transfer fee/development charges with the Petitioner society in respect of Plot No. 17, pursuant where to, payment receipt was also issued by the Society in the name of Mrs Sequiera for a sum of Rs. 10,71,000/-. After the transfer of the ownership was completed, the Respondents Nos. 5 and 6 had submitted complaints before the Respondent No. 4 on 7th November 2012, 19th November 2012 and 20th November 2012, invoking his jurisdiction under Section 79(2) of the Maharashtra Cooperative Societies Act 1960 (hereinafter referred to as “the Act of 1960”). In the said complaint, a number of allegations had been brought against the Petitioner-Society which are, *inter-alia*, to the effect that the society has failed to adopt

the model bye-laws approved by the Government from time to time; that the society has been collecting excessive amount in the pretext of transfer fee and development charges; the amount of Rs. 10,71,000/- collected by the society from the Applicant for the transfer of Plot No. 17 which was nothing but transfer fee but such development charges had not been collected from the other members of the society; that the society is practicing discrimination in the use of plots; that the society had collected Rs. 10,71,000/- annually even for the vacant plots; that the society has violated provisions of Cooperative Societies Act as well as the Income Tax Act; that the society has not permitted installation of hoardings thereby imposing restrictions on the members, etc.

- (b) The Petitioner Society had contested the complaints submitted by the Respondents Nos. 5 *inter alia* contending that the sum of Rs. 10,71,000/- was deposited not as transfer fee but as development charge, which was in accordance with the provisions of

the existing bye-laws of the society; that the Complainants do not have right to claim refund of such development charges; that the prayer for refund of development charge was barred by law of limitation; that the amount of development charge was deposited on 12th May 2006 and, therefore, the amount cannot be claimed by the Respondent Nos 5 & 6 since it was deposited by the original owner on a date when the said Respondent were not even the members of the Society.

2. After considering the submissions of the parties, the Respondent No. 4 had passed Order dated 1st April 2013 allowing the complaints filed by Respondents Nos. 5 and 6. The operative portion of the Order dated 1st April 2013, translated in English, reads as follows:

“ORDER

Based on the above discussion, I, R.B. Kulkarni, Deputy Registrar, Co-operative Societies, Pune City (2), in exercise of the powers conferred upon me under Section 79(2) of the Maharashtra Co-operative Societies Act, 1960, hereby issue the following directions to the Chairman and Members of the Managing Committee of the National Co-operative Housing Society Ltd., S. No. 118, 124, Baner Road,

Aundh, Pune- 7, regarding the functioning of the society:

1. The transfer fee (charged under the name of "development charges") collected by the society from Mr. Vishal Kataria in relation to Plot No. 17 exceeds the maximum limit of Rs.25,000/- as prescribed by Government Circulars. Therefore, the excess amount is refundable, and the society shall initiate the process of refunding the excess transfer fee within one month. Failing which, the concerned member shall be at liberty to initiate recovery proceedings in a competent court of law.

2. The society has not adopted the Model Bye-laws approved by the Hon'ble Commissioner for Co-operation for plot-type housing societies. Hence, the society shall immediately initiate the process of adopting the said Model Bye-laws and submit them to this office for registration. These bye-laws must strictly comply with the applicable Act, rules, and Government decisions issued from time to time.

3. The society shall not discriminate among members while charging the maintenance fee of Rs.1,20,000/- for vacant (undeveloped) plots. The society is directed to take necessary action in this regard in accordance with the orders of the Hon'ble Co-operative Court.

4. It appears that the society has framed building regulations as per the Managing Committee's approval in meetings dated 10/10/2003, 15/07/2005, and 09/05/2006. Therefore, the society is directed to prepare a legally valid building policy in compliance with the Development Control (D.C.) Rules of the Municipal Corporation, and to get it approved in the General Body Meeting.

While granting permission for commercial or non-residential use, the society must not discriminate among its members. The society shall immediately take a decision on the application submitted by the applicant in this

regard. A similar process should be followed for granting permission for installing hoardings.

The society is hereby directed to comply with the above-mentioned instructions and to submit a compliance report to this office within one month.”

3. As noted above, the Appeal preferred by the Petitioner-Society against the Order dated 1st April 2013 before the Respondent No. 3 under Section 152 of the Act of 1960 being registered as Appeal No. 28/2013, was rejected by the Order dated 6th September 2014. Hence, this Writ Petition.

4. By inviting the attention of this Court to the materials on record, Mr Anturkar, learned Senior Counsel appearing for the Petitioners has argued that the claim of the Respondents Nos. 5 and 6 was barred by the law of limitation. The learned Senior Counsel has further submitted that the impugned order has been passed merely by relying upon the Circular dated 9th August 2001 issued by the Government of Maharashtra under Section 79-A, but the said circular would not have any application in case of a plot based society.

5. Mr Anturkar has further argued that the Respondent No. 4 did not have the jurisdiction to pass such directions under Section

79(2) of the Act of 1960 *inter alia* for enforcing the Circular dated 9th August 2001 since such power was not conferred upon him under the statute. The learned Senior Counsel has also argued that the Circular dated 9th August 2001 was not binding on the society. However, even assuming that the same was binding, even then, the Respondent No. 4, in exercise of jurisdiction under Section 79(2) of the Act of 1960, which expressly refers to compliance of orders made under the “forgoing sub-Sections”, did not have the jurisdiction to issue directions for enforcement of the said Circular.

6. Learned Senior Counsel appearing for the Petitioner has further argued that having submitted an Affidavit, undertaking to comply with the bye-laws of the society, the Respondents would be de-barred under the principles of waiver, estoppel and acquiescence from turning around and challenging the levy of development charge of Rs. 10,71,000/- after depositing the same with the society without raising any protest. Alternately, Mr Anturkar has submitted that since the receipt has been issued in the name of Mrs Sequiera for the amount of Rs. 10,71,000/-, the Respondents Nos. 5 and 6 cannot claim refund of the same.

7. Contending that the power to issue direction to the society to adopt the model bye laws lies with the State Government and not the Deputy Registrar, learned Senior Counsel has also submitted that the Respondent No. 4 could not have issued such a direction contained in the impugned order. Therefore, he submits that the impugned Orders dated 1st April 2013 and 6th September 2014 are illegal and hence, liable to be set aside by this Court. In support of his above arguments, Mr. Anturkar has placed reliance on the decisions in the case of *Zoroastrian Cooperative Housing Society Ltd & Anr vs District Registrar, Cooperative Societies (Urban) & Ors*¹ and *Santoshkumar Shivgonda Patil & Ors vs Balasaheb Tukaram Shevale & Ors*.²

8. Responding to the above arguments, Mr. Abhishek Punglia, learned counsel appearing for the Respondents Nos. 5 and 6 has submitted that the Writ Petition is not maintainable in law since the Petitioner has not challenged the major portion of the impugned Order dated 1st April 2013 passed by the learned Deputy Registrar. He has further submitted that the Petitioner-Society, not being a citizen, cannot maintain a Writ Petition alleging violation of the

1 2005 (5) SCC 632.

2 (2009) 9 SCC 352.

fundamental rights. According to Mr. Punglia, the jurisdiction under Sub-Section 2 of Section 79 of the Act of 1960 is not confined merely to exercise of power to issue directions in respect of matters contemplated by Sub-Section 1 of Section 79 but the same can be invoked even for recovery of money, if the amount is found to have been illegally realized from the members of the Housing Society. Contending that the plea of limitations raised by the Petitioners cannot be entertained by this Court since there is no pleading to that effect in the Writ Petition, Mr. Punglia has submitted that there is no good ground for this Court to interfere with the impugned Order(s). Therefore, the Writ Petition be dismissed. In support of his above arguments, Mr Punglia has relying upon the following decisions:-

1.	Bhanddaa Zila Parishad Wa Pandhayat Samiti Karmachari Sahakari Sanstha Ltd vs Divisional Joint Registrar, Cooperative Societies, Nagpur & Ors, reported in 2015(4) Mah .L.J. 409.
2.	Maitri Park Co-operative Housing Society vs Virendra Khanna (Writ Petition No. 5521 of 2005, Appellate Side, Bombay High Court).
3.	Shining Star Cooperative Housing Society vs Divisional Joint Registrar (Writ Petition No. 962 of 2011, Original Side, Bombay High Court).
4.	New India Cooperative Housing Society vs The Deputy Registrar (Writ Petition No. 2022 of 2015, Original Side Bombay High Court).
5.	Harakh Bhagat vs Assistant Registrar, Cooperative Societies, reported in AIR 1968 Patna 211.

9. After analyzing the arguments advanced by the learned counsel for the parties, we find that the fundamental plea raised by the Petitioner's counsel is to the effect that the impugned order dated 1st April 2013 suffers from error of jurisdiction. If the Petitioner succeeds in bringing home the above argument, then in that event, it would not be necessary for this Court to go into the other grounds of challenge raised in the Writ Petition.

10. In the present case, it is the undisputed position of fact that the impugned order dated 1st April 2013 was passed by the Respondent No 4 in exercise of power under Section 79 of the Act of 1960. As such, for the purpose of appreciating the contentions advanced by the parties, it would be necessary to reproduce Section 79 of the Act of 1960 here-in-below:-

“79. Registrar's power to enforce performance of obligations.—

(1) The Registrar may direct any society or class of societies, to keep proper books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(2) Where any society is required to take any action under this Act, the rules or the bye-laws, or to comply with an order made under the Foregoing sub-section, and such action is not taken-

(a) within the time provided in this Act, the rules or the bye- laws, or the order as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing, the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrears of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the bye-laws, or the order made under sub-section (1) and after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.”

11. From a careful reading of Section 79 of the Act of 1960, it is clear that the powers under the said provisions can be exercised by the Registrar to enforce performance of obligations of the society to file returns and statements. Under Sub-section 2 of Section 79 the Registrar would also be entitled to take action, either by himself or through a person authorized by him, if there is failure on the part of

the society to take action under the rules or the bye laws or to comply with any order made under Sub-section 1 of Section 79.

12. In the present case, it is not in dispute that realization of the development charge of Rs 10,71,000/- from the Respondent No 5 was not only in accordance with the bye laws of the society but the Respondent no 5 had also filed an affidavit agreeing to abide by the bye laws of the society. It is also not the case of the complainants that the society has failed to comply with any of the statutory measures envisaged by Section 79 thus, permitting the Registrar or his authorized person to take action in the matter. After examining the complaints filed by the Respondent Nos 5 & 6 as well as the relevant provisions of the Act of 1960, we are of the view that the power to enforce the provisions of the Circular dated 9th August, 2001 issued under Section 79-A of the Act was not available to the Respondent no 4 under section 79(2) since the said Circular was not issued under the “foregoing Sub-sections” of Section 79(2) of the Act of 1960.

13. From the material on record, it appears that the primary grievance of the Respondent Nos 5 & 6 is on account of realization of the development charge of Rs 10,71,000/- by the society. The

Respondent Nos 5 & 6 are seeking refund of the amount by urging that the same has been realized by the society as transfer charge. Such assertion of the Respondent Nos 5 & 6 has, however, been stoutly denied by the Petitioner society.

14. It is to be noted here-in that, ordinarily, recovery of any amount can be made in execution of an order which is in the nature of a money decree. The only exception could be in such cases, where provisions are expressly made in the statute permitting any other mode. Whether, the amount Rs 10,71,000/- included development charges and if so, whether the Respondent Nos 5 & 6 were entitled to recover such amount under the bye laws of the society and if the claim was barred under the law of limitations are disputed questions of law and facts which will have to be determined by a competent forum in accordance with law. The Respondent No 4 cannot be said to be clothed with the jurisdiction under Section 79(2) of the Act to adjudicate upon such disputed questions of law and facts. The dispute raised by the Respondent Nos 5 & 6 on such count, in our considered opinion, raises a civil dispute *inter-se* the contesting parties, which clearly falls outside the scope and ambit of Section 79 of the Act of 1960.

15. It is to be further noted herein that Respondent No. 4 himself was conscious of the fact that there is no mechanism under Section 79(2) to enforce an order to refund the amount of Rs. 10,71,000/- and, therefore, it has been mentioned in the impugned order that the complainants were required to approach the competent Court of law for refund of the amount. If that be so, there can be no element of doubt in our mind that while issuing the impugned order dated 1st April 2013, even the Respondent No 4 was conscious of the fact that a direction to refund the amount was beyond the purview of his power and jurisdiction under Section 79(2) of the Act of 1960.

16. In so far as the direction to adopt the model bye laws are concerned, the learned counsel for the Respondent Nos 5 & 6 has argued that the society was required to adopt the Model bye laws which it had failed to do. Hence, the directions by the Respondent No 4 were justified. Here also , we find that Section 79 of the Act of 1960 did not confer any jurisdiction on the Respondent No.4 to issue such a direction to the society. The direction to adopt model bye laws, in our view, would be akin to a direction to amend the existing bye laws of the society. Therefore, power to issue such a

direction, in our considered opinion, would come within the purview of Section 14 of the Act of 1960.

17. In the case of *Karvenagar Sahakari Griha Rachana Sanstha Maryadit Pune & Anr vs State of Maharashtra & Ors*,³ this Court has held that the power under Section 14 can be exercised by the Registrar directing amendment of the bye-laws, if it appears that such amendment is necessary or desirable in the interest of the society. The Registrar cannot force the society to amend the bye-laws when it is neither necessary nor desirable in the interest of the society.

18. The Judgment of this Court rendered in the case of *Karvenagar Sahakari Griha Rachana Sanstha Maryadit Pune & Anr vs State of Maharashtra & Ors* (Supra) on 27th February 1989 was affirmed by the Apex Court on 3rd May 2000 by rejecting the challenge made by the State, holding that while exercising power conferred on the Registrar under Section 14, paramount consideration is in the interest of the society.

3 W. P. No. 4415 of 1987, decided on 27th February 1989 (Bombay).

19. In the aforesaid Judgement it has also been observed that although Section 79-A of the Act of 1960 enables the State Government to issue directions for various reasons mentioned therein, such power of the State can be exercised only in public interest but the same cannot be exercised in a manner which is prejudicial to the interest of the society.

20. It was further observed that what is in the interest of the society is primarily for the society to decide and not for the outside agency. Where the Government or the Registrar exercises statutory power of issuing directions to amend the bye-laws, such directions should satisfy the requirement of interest of the society. Moreover, such a direction, even if confirmed, can only have a prospective effect and the same cannot undo any transaction made at an earlier point of time in accordance with the existing bye laws.

21. The Respondent Nos 5 & 6 have failed to demonstrate before this court as to in what manner, the directions issued by the impugned order dated 1st April 2013, as affirmed by the Appellate order dated 6th September 2014, to adopt the model bye laws was in the interest of the society. Therefore, in view of the law laid down in the case of *Karvenagar Sahakari Griha Rachana Sanstha*

Maryadit Pune & Anr (supra) such a direction would be unsustainable in law. Such being the position, the decisions relied upon by the learned Counsel for the Respondent No 5 & 6 would not be of any assistance to him in the facts and circumstances of the present case.

22. During the course of arguments, the learned Senior Counsel appearing for the Petitioner has confined his arguments only on the legality and validity of the above noted two directions contained in the impugned order dated 1st April, 2013 as affirmed by the appellate order dated 6th September, 2014. Therefore, it would not be necessary for this Court to embark upon adjudication on the question of validity of the other directions contained in the impugned order dated 1st April, 2013.

23. For the reasons stated here-in above, we are of the unhesitant opinion that the impugned order dated 1st April 2013, as confirmed by the appellate order dated 6th September 2014, in so far as the same relates to the claim of refund of the sum of Rs 10,71,000/- as claimed by the Respondent Nos 5 & 6 and direction to adopt the model bye laws are concerned, are unsustainable in law. We, therefore, set aside the order dated 1st April 2013, in so far the

same relates to the above directions. Consequently, the appellate order dated 6th September, 2014 also stands interfered with to the above extent.

24. We, however, make it clear that notwithstanding the above determination, it will be open for the Respondents Nos. 5 & 6 to avail appropriate legal remedy, in the matter, before the competent forum, in accordance with law, if so advised.

25. The Writ Petition stands allowed to the above extent.

26. Parties to bear their own costs.

(MANJUSHA DESHPANDE, J.)

(SUMAN SHYAM, J.)