

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2372 OF 2014

- | | | |
|----|--|---|
| 1] | M/s. Cosmopolitan -1 (Safal Complex) |] |
| | Co-operative Housing Society Ltd., |] |
| | Plot No.17, Sector-19A, Nerual |] |
| | Navi Mumbai – 400 706 |] |
| | |] |
| 2] | Mr. M. Sundaresan |] |
| | Chairman of Cosmopolitan-1 |] |
| | (Safal Complex), Co-operative Housing Society |] |
| | Ltd. residing at Flat No.B-3/604, |] |
| | Cosmopolitan -1 (Safal Complex) Co-operative |] |
| | Housing Society Ltd, Plot No.17, |] |
| | Sector – 19A, Nerual, Navi Mumbai-400706 |] |
| | |] |
| 3] | Mr. Hariharan S., |] |
| | Secretary of Cosmopolitan-1 (Safal Complex), |] |
| | Co-operative Housing Society Ltd. residing at |] |
| | Flat No.B-10/602, Cosmopolitan -1 |] |
| | (Safal Complex) Co-operative Housing Society |] |
| | Ltd, Plot No.17, Sector – 19A, Nerual, |] |
| | Navi Mumbai-400706 |] |
| | |] |
| 4] | Mr. Kuldeep Jain |] |
| | Treasurer of Cosmopolitan-1 (Safal Complex), |] |
| | Co-operative Housing Society Ltd. residing at |] |
| | Flat No.B-7/103, Cosmopolitan-1 |] |
| | (Safal Complex) Co-operative Housing Society |] |
| | Ltd, Plot No.17, Sector – 19A, Nerual, |] |
| | Navi Mumbai-400706 |] |
| | |] |
| 5] | Mr. Nitin Kelkar |] |
| | Committee Member of of Cosmopolitan-1 |] |
| | (Safal Complex), Co-operative Housing Society |] |
| | Ltd. residing at Flat No.B-11/101, |] |
| | Cosmopolitan-1 (Safal Complex) Co-operative |] |
| | Housing Society Ltd, Plot No.17, Sector – 19A, |] |
| | Nerual, Navi Mumbai-400706 |] |

- 6] Mr. Sandeep R Utekar,]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]]
 Ltd. residing at Flat No.B-4/402,]
 Cosmopolitan-1 (Safal Complex) Co-operative]
 Housing Society Ltd, Plot No.17, Sector – 19A,]]
 Nerual, Navi Mumbai-400706]]
- 7] Mr. Vinod A Nair]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]]
 Ltd. residing at Flat No.B-9/603,]
 Cosmopolitan-1 (Safal Complex) Co-operative]
 Housing Society Ltd, Plot No.17, Sector – 19A,]]
 Nerual, Navi Mumbai-400706]]
- 8] Mr. Saiyad Firoz A Sattar]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]]
 Ltd. residing at Flat No.B-10/404,]
 Cosmopolitan-1 (Safal Complex) Co-operative]
 Housing Society Ltd, Plot No.17, Sector – 19A,]]
 Nerual, Navi Mumbai-400706]]
- 9] Mr. Ajeet N Menon]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]]
 Ltd. residing at Flat No.B-1/401,]
 Cosmopolitan-1 (Safal Complex) Co-operative]
 Housing Society Ltd, Plot No.17, Sector – 19A,]]
 Nerual, Navi Mumbai-400706]]
- 10] Mr. Ankush Chavan]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]]
 Ltd. residing at Flat No.B-6/603,]
 Cosmopolitan-1 (Safal Complex) Co-operative]
 Housing Society Ltd, Plot No.17, Sector – 19A,]]
 Nerual, Navi Mumbai-400706]]
- 11] Mrs. Ranu Budhiraja]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]]

- Ltd. residing at Flat No.B-8/103,]
 Cosmopolitan-1 (Safal Complex) Co-operative]
 Housing Society Ltd, Plot No.17, Sector – 19A,]
 Nerual, Navi Mumbai-400706]
]
- 12] Mr. R C Modi]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]
 Ltd. Plot No.17, Sector – 19A,]
 Nerual, Navi Mumbai-400706]
]
- 13] Mrs. Pallavi Choudhary]
 Committee Member of of Cosmopolitan-1]
 (Safal Complex), Co-operative Housing Society]
 Ltd. residing at Flat No.B-12/401,]
 Cosmopolitan-1 (Safal Complex) Co-operative]
 Housing Society Ltd, Plot No.17, Sector – 19A,]
 Nerual, Navi Mumbai-400706]..... Petitioners

versus

- 1] Mr. Rakesh Talwar]
 Flat No.B-12/601, Cosmopolitan -1]
 (Safal Complex) CHS Ltd. Plot No.17,]
 Sector – 19A, Nerual, Navi Mumbai-400706]
]
- 2] Mr.Sudhakar V Sawant]
 Flat No.B-02/703, Cosmopolitan -1]
 (Safal Complex) CHS Ltd. Plot No.17,]
 Sector – 19A, Nerual, Navi Mumbai-400706]
]
 (Deleted)]
]
- 3] Mrs. Lakshmi Suryanarayanan,]
 Flat No.B-12/601, Cosmopolitan -1]
 (Safal Complex) CHS Ltd. Plot No.17,]
 Sector – 19A, Nerual, Navi Mumbai-400706]
]
- 4] Mrs. Arkan Britto]
 Flat No.B-06/704, Cosmopolitan -1]
 (Safal Complex) CHS Ltd. Plot No.17,]
 Sector – 19A, Nerual, Navi Mumbai-400706]
]

- 5] Mr. M. Rahamatulla,]
Flat No.B-05/701, Cosmopolitan -1]
(Safal Complex) CHS Ltd. Plot No.17,]
Sector – 19A, Nerual, Navi Mumbai-400706]
]]
(Deleted)]
- 6] Mr. M. Shivakumar Wadhwa]
Flat No.B-06/701, Cosmopolitan -1]
(Safal Complex) CHS Ltd. Plot No.17,]
Sector – 19A, Nerual, Navi Mumbai-400706]
]]
- 7] The Jt. Registrar,]
Co-operative Societies (CIDCO), Third Floor]
Raigad Bhavan, CBD Belapur,]
Navi Mumbai – 400614]
]]
- 8] The Hon'ble Minister,]
Co-operation Department, Mentrallaya]
Mumbai.]..... Respondents.

Mr. Avinash H Fatangare for the Petitioners.

Ms.Pooja Khandeparkar for the Respondent Nos.1, 3, 4 and 6

Mrs. V S Nimbalkar AGP for the Respondent Nos.7 and 8.

Respondent Nos.2 and 5 are deleted by today's order.

CORAM : R. M. SAVANT, J.

DATE : 30th July 2015

ORAL JUDGMENT :-

1 At the outset the learned counsel appearing on behalf of the Petitioners seeks deletion of the Respondent Nos.2 and 5 from the array of the Respondents. The said Respondent Nos.2 and 5 are accordingly deleted at the risk of the Petitioners. Amendment to be carried out forthwith.

2 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 3/1/2014 passed by the Revisionary Authority i.e. the then Hon'ble Minister for Co-operation, Government of Maharashtra, by which order the Revision Application filed by the Respondents herein came to be allowed and the directions as contained in clause (2) of the operative part of the impugned order came to be issued.

4 It is not necessary to burden this order with unnecessary details having regard to the nature of the directions to be issued. The instant proceedings have arisen on account of the application filed by the Respondent Nos.1 to 6 herein before the Assistant Registrar, Co-operative Societies, CIDCO, Navi Mumbai making a grievance in respect of the recovery of the amounts due on account of the repairs to the ceiling below the terrace of the buildings of the Petitioner No.1 – Society. The said application was considered by the Assistant Registrar who having regard to the nature of the grievance made vide the said application held that he did not have the jurisdiction to entertain the said application and that the Respondents were required to file proceedings under Section 91 of the Maharashtra Co-operative Societies Act. The order of the Assistant Registrar is dated 14/3/2013.

5 The Respondents aggrieved by the said order of the Assistant

Registrar invoked the revisionary jurisdiction under Section 154 of the said Act and approached the State Government by way of a Revision Application.

6 The Revisionary Authority though the Revision was filed against the order passed by the Assistant Registrar holding that he did not have the jurisdiction, proceeded with to consider the Revision on merits rather than adjudicating upon the issue as to whether the Assistant Registrar had the jurisdiction. It is after consideration the Revision on merits that the Revisionary Authority has observed that the Petitioner No.1 Society could not have passed the resolution dated 6/1/2013 which is in derogation of the resolutions dated 29/7/2012 and 15/08/2012 passed earlier. The Revisionary Authority has thereafter concluded that the Respondent Nos.1 to 6 cannot be made liable for the amounts towards the expenditure incurred for the repairs to the ceiling below the terrace of the buildings.

7 In my view, the Revisionary Authority ought to have considered the issue of jurisdiction, and if it was satisfied that the Assistant Registrar could have exercised jurisdiction under the provisions of the said Act considering the nature of the grievance of the Respondent Nos.1 to 6 and considering the reliefs which were sought by the Respondent Nos.1 to 6. The Revisionary Authority ought to have set aside the order passed by the Assistant Registrar and directed the Assistant Registrar to consider the application filed by the

Respondent Nos.1 to 6 on merits. That being not done by the Revisionary Authority and the Revisionary Authority having proceeded to consider the matter on merits, in my view, the order passed by the Revisionary Authority would have to be quashed and set aside and is accordingly quashed and set aside and the matter is relegated back to the Revisionary Authority for a denovo consideration of the Revision Application. On remand the Revisionary Authority to consider the issue of jurisdiction of the Assistant Registrar on the touchstone of the relevant provisions as would be pleaded by the Respondent Nos.1 to 6. It is only in the event that the Revisionary Authority comes to the conclusion that the Assistant Registrar can in fact exercise the powers under the relevant provisions of the said Act that it may set aside the order passed by the Assistant Registrar and direct the Assistant Registrar to denovo consider the application filed by the Respondent Nos.1 to 6. On remand the parties to appear before the Revisionary Authority on 19/08/2015. The Revisionary Authority thereafter to decide the Revision Application within 8 weeks of 19/08/2015. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]