

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7186 OF 2015**

Seena Janardhan Patil ..Petitioner
Vs.
Hon. Chairman / Secretary
Shrikumar Co-op Housing Society Ltd & ors. ..Respondents

**WITH
WRIT PETITION ST.NO.18999 OF 2015**

Shirish Narayan Pradhan ..Petitioner
Vs.
Hon. Chairman / Secretary
Shrikumar Co-op Housing Society Ltd & ors. ..Respondents

**WITH
WRIT PETITION ST. NO.19225 of 2015**

Zubair J. A. Khan ..Petitioner
Vs.
Hon. Chairman / Secretary
Shrikumar Co-op Housing Society Ltd & ors. ..Respondents

Mr. Ajit Karwande for the Petitioners
Mr. Mohan Pungliya a/w Mr. Neel Pungliya for the Respondent No.1
Ms M. S. Bane “B” panle counsel for the Respondent No.2, 3 & 5

CORAM : R. M. SAVANT, J.
DATE : 28th July, 2015

P.C.

1 The above Petitions take exception to the order dated 12-10-2011 passed by the Assistant Registrar, Co-operative Societies H/East ward, Mumbai, by which order, a certificate under Section 101 of the Maharashtra Co-operative Societies Act (for short the said Act), came to be issued against the

Petitioners. The Petitions also take exception to the order dated 22-1-2015 passed by the District Deputy Registrar, by which order the Revision Application filed by each of the Petitioners came to be dismissed. The above Petitions involve virtually identical facts and are therefore heard and disposed of.

2 The Petitioners in the above Petitions are the members of the Respondent No.1 Co-operative Housing Society. It seems that the society has seven buildings. The Petitioners are the residents of 'C' building. The society resolved to get the buildings repaired sometime in the year 2002 pursuant to which the members were called upon to contribute at Rs.200 per sq.ft. for the said repairs. It appears that except building 'C', the other six buildings were repaired, in so far as the repairs to the building 'C' is concerned the same could not be carried out in view of the non co-operation of the members residing in the 'C' building. Thereafter certain events have intervened in the matter in respect of the attempt of the members of the building 'C' to bifurcate from the Respondent No.1 society and have their own society which bifurcation was allowed by the authorities exercising powers under the said Act which order of bifurcation was stayed by an order passed by this Court in the Writ Petition filed by the Respondent No.1 society being Writ Petition No.4426 of 2005. Hence the building 'C' continues to be the part of the Respondent No.1 society. In view of the fact that the repairs of the building 'C' could not be carried out

along with the other buildings, in the General Body meeting dated 29-6-2008 of the society it was resolved to carry out the repairs of the said building 'C', pursuant to the contractor M/s. Khilji Construction who was appointed. However, in view of the time lag of 6 years elapsing between the year 2002 to 2008, the members who were occupying the flats in the building 'C' were asked to contribute at Rs.480 per sq.ft. In view of the fact that the Petitioners did not make the said contribution to the said building repairs as also did not pay the maintenance charges of the Respondent No.1 society that applications came to be filed by the Respondent No.1 society before the Assistant Registrar Co-operative Societies invoking Section 101 of the said Act, for issuance of recovery certificates against the Petitioners. The amount claimed from each of the Petitioner is as under :

- (i) Seena Janardhan Patil : Rs. 3,37,886/-
- (ii) Satish Narayan Pradhan : Rs. 3,21,454/-
- (iii) Zubair J. A. Khan : Rs.2,58,109/-

3 In support of the said applications the Respondent No.1 society filed its statement of account in respect of each of the Petitioners. The Petitioners sought to raise various contentions before the authority which was trying the said application filed under Section 101. The authority having regard to the scope of an inquiry observed that the said contentions could not

be entertained in a proceeding under Section 101 of the said Act. The authority recorded a finding that the statement of account produced by the Respondent No.1 society appears to be proper and accordingly issued a certificate under Section 101 of the said Act.

In so far as the Petitioner S. N. Pradhan is concerned the said certificate has been issued in the sum of 4,76,295/-. In so far as the Petitioner Seena Janardhan Patil is concerned the said certificate has been issued in the sum of Rs. 5,01,145/- and in so far as the Petitioner Zubair J. A. Khan is concerned, the said certificate has been issued in the sum of 4,52,840/-.

4 The Petitioners aggrieved by the issuance of the said certificates challenged the same by invoking the Revisionary Jurisdiction under Section 154 of the said Act by filing Revision Applications before the Divisional Joint Registrar Co-operative Societies. The Divisional Joint Registrar as indicated above has dismissed the Revision Applications. The Divisional Joint Registrar has adverted to the facts antecedent to the filing of the applications by the Respondent No.1 society under Section 101 of the said Act. The Divisional Joint Registrar held that in the fact situation prevailing in the present case, the orders passed by the Assistant Registrar issuing recovery certificates under Section 101 of the said Act, could not be faulted with. The Revision Applications filed by the Petitioners were accordingly dismissed.

5 The Learned Counsel appearing for the Petitioners sought to raise contentions which were sought to be raised before the authorities below which the Assistant Registrar did not countenance having regard to the scope of the inquiry. The Learned Counsel would contend that there was no warrant to carry out the repairs to the building-C as the repairs were already carried out in the year 1996. It was also contended that the Petitioners are sought to be discriminated whilst the other occupants of the building-C have been given concession. The Learned Counsel also sought to question the resolution dated 29-8-2008.

6 In my view, it is not possible to entertain any of the contentions having regard to the nature of the proceedings out of which the above Petitions have arisen. If the Petitioners are aggrieved by the said resolution dated 29-6-2008, it is for the Petitioners to challenge the same by filing appropriate proceedings under Section 91 of the said Act. This Court has informed that in fact such proceedings have been filed by the Petitioners in which issues have been framed. In so far as the present proceedings are concerned, the same are restricted to the recovery of the dues from the Petitioners. Having regard to the findings recorded by the authorities below, in my view, no case for exercise of the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is made out. The Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]