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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2318 OF 2007

Yuvak Co-operative Housing Society .Petitioner
Limited, a Society duly registered under
Maharashtra Co-operative Societies Act,
1960 having its office at 110, Municipal
Tenements, D.G.Mahajani Peth, Sewri,
Mumbai – 400 015.

V/s.

1. Mrs. Anuradha S. Ausekar .Respondents
of Bombay Indian Inhabitant residing
at Room No.2, Chawl No.7, 110,
Municipal Tenements, D.G.Mahajani
Peth, Sewri,
Mumbai – 400 015.
2. The Assistant Commissioner (Estate)
Municipal Corporation, having office
at Chatrapati Shivaji Market,
Paltan Road,
Mumbai.
3. Divisional Joint Registrar,
Co-operative Societies, Mumbai Division,
Malhotra House, 6th floor, Opp. G.P.O.,
Mumbai – 400 001.

WITH
WRIT PETITION NO.2328 OF 2007

Yuvak Co-operative Housing Society .Petitioner
Limited, a Society duly registered under
Maharashtra Co-operative Societies Act,
1960 having its office at 110, Municipal
Tenements, D.G.Mahajani Peth, Sewri,
Mumbai – 400 015.

V/s.

1. Suhas Srishar Rane
of Bombay Indian Inhabitant residing
at Room No.6, Building No.8, 110,
Municipal Tenements, D.G.Mahajani
Peth, Sewri,
Mumbai – 400 015. .Respondents
2. The Assistant Commissioner (Estate).
Municipal Corporation, having office
at Chatrapati Shivaji Market,
Paltan Road,
Mumbai.
3. Divisional Joint Registrar,
Co-operative Societies, Mumbai Division,
Malhotra House, 6th floor, Opp. G.P.O.,
Mumbai – 400 001.

WITH
WRIT PETITION NO.2329 OF 2007

Yuvak Co-operative Housing Society .Petitioner
Limited, a Society duly registered under
Maharashtra Co-operative Societies Act,
1960 having its office at 110, Municipal
Tenements, D.G.Mahajani Peth, Sewri,
Mumbai – 400 015.

V/s.

1. Vishwas Sakharam Pawar
of Bombay Indian Inhabitant residing
at Room No.6, Building No.8, 110,
Municipal Tenements, D.G.Mahajani
Peth, Sewri,
Mumbai – 400 015. .Respondents
2. The Assistant Commissioner (Estate).
Municipal Corporation, having office
at Chatrapati Shivaji Market,
Paltan Road,
Mumbai.

3. Divisional Joint Registrar,
Co-operative Societies, Mumbai Division,
Malhotra House, 6th floor, Opp. G.P.O.,
Mumbai – 400 001.

Mr. Aditya S. Desai i/b Mr. V.K. Damle for the Petitioner

Mr. R.V. Govilkar for Respondent No.1.

Mr.A.Y.Sakhare, Senior Counsel a/w. Mr. Joel Carlos and
Ms. K.H.Mastakar, for the Respondent No.2 – Municipal Corporation
in Writ Petition No.2318 of 2007.

Ms. K.H. Mastakar for Respondent No.2-Municipal Corporation in WP
Nos.2328 of 2007 and 2329 of 2007.

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CORAM : A.A.SAYED, J.

DATE : 10 DECEMBER 2015

JUDGMENT

. By these three Petitions filed invoking Article 226 of the Constitution of India, the Petitioner–Society has challenged the three separate orders dated 3 August, 2007 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, in Revision, confirming the three separate orders dated 20 October, 2006 passed by the Assistant Registrar, Co-operative Societies, F-N Ward, Mumbai. By the impugned orders, the three Applications of the Respondent No.1 (in each of the three Petitions) under Section 23 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'MCS' Act) was allowed and the Petitioner–Society was directed

to admit the Respondent No.1 (in each of the three Petitions) as member of the Petitioner–Society. Inasmuch as the issues raised in the three Petitions are more or less similar, the three Petitions are being disposed of by this common order.

2. The Bombay Municipal Corporation (BMC) is the owner of the property situated at D.G. Mahajan Marg, Sewri, Mumbai (hereinafter referred to as 'the said property'). In or about 1950, BMC constructed 110 tenements on the said property. The 110 tenements consisted of 100 residential tenements and 10 shops, comprising 11 ground floor structures of semi-permanent nature which were let out to various tenants. On 23 September 1975 vide a Resolution, BMC decided to construct new buildings of four floors consisting of 230 tenements and 11 shops on the said property, as the afore-mentioned structures became dilapidated. Construction of the first phase of 40 flats was completed by BMC. 34 tenants from the existing chawls and/or demolished chawls shifted to the new building. As few of the tenants refused to shift, BMC accommodated six of its employees in the empty flats of the new building. Though the scheme was to construct 230 flats in three phases, only one phase was completed due to budget constraints. The entire property which belongs to BMC was thus partly occupied by municipal tenants and partly by municipal

employees. On 5 June 1985, 27 municipal employees formed the Petitioner-Society (proposed) and applied to BMC for a plot of land for re-development as the work of construction by BMC had come to a standstill. On 5 July 1985, BMC allotted land admeasuring 2675.56 sq.yards to the Petitioner-Society on conditions mentioned in the letter of allotment.

3. On 18 April 1986 the Petitioner-Society was registered. As indicated earlier, the said property was partly occupied by municipal employees and partly by municipal tenants. 64 Municipal tenants who were in occupation of remaining portion of the said property filed Writ Petition No.579 of 1999 in this Court against the allotment of the land to the Petitioner – Society and for directions against BMC to complete phases 2 and 3 of the redevelopment. The Petitioner Society took out a Chamber Summons and was added as party Respondent to the said Writ Petition. (As stated hereinafter, the said Writ Petition was ultimately withdrawn on 10 December 1999.)

4. On 3 March 1992 BMC cancelled the allotment of the municipal land made to the Petitioner-Society due to various litigations and disputes. Being aggrieved by the cancellation of the allotment, the Petitioner-Society filed Writ Petition No.265 of 2000 against BMC. On

14 December 2000, this Court admitted the Writ Petition and passed an interim order protecting the possession of the 13 members of the Petitioner Society. (The said Writ Petition was ultimately withdrawn on 7 October 2009 in the circumstances mentioned hereinafter).

5. In 1994, the 64 Municipal tenants formed a society known as "Ashwamedh CHS (proposed)". The said Ashwamedh Society submitted a scheme for redevelopment under DCR 33(9) and 33(7). One M/s Om Sahil Solitaire was appointed as Developer by Ashwamedh Society. The Petitioner-Society arrived at settlement with M/s Om Sahil Solitaire to the effect that if the said 13 members of the Petitioner-Society were given accommodation by the Developer (from the free sale component of the Developer), they would withdraw their Writ Petition No.265 of 2000. Ashwamedh Society had also shown their willingness for settlement. BMC was also informed accordingly.

6. Mr. Vishwas Pawar (Respondent No.1 in Writ Petition No.2329 of 2007 occupying Room No.6 in Building No.8), Mr. Suhas Rane (Respondent No.1 in Writ Petition No.2328 of 2007 occupying Room No.9 in Building No.8) and Ms. Anuradha Ausekar (Respondent No.1 in Writ Petition No.2318 of 2007 occupying Room No.2 in Building No.7) are hereafter referred to as 'the said Respondents'. The name of the said Respondents did not appear in the list approved by

the BMC on 5 July 1985 as they came in occupation of their respective tenements sometime after 5 July 1985. In 2005, the said Respondents made three Applications respectively before the Assistant Registrar, Co-operative Court for membership of the Petitioner-Society. On 13 April 2006, the Asst. Registrar rejected the said Applications on the ground that the Applications were not in the form prescribed under section 23 of the Maharashtra Co-operative Societies Act. On 29 July 2006 each of the said Respondents made another Application for membership of the Petitioner-Society. On 20 October 2006, the Assistant Registrar by three separate orders allowed the three Applications and directed the Petitioner-Society to enroll the said Respondents as members and issue Share Certificate to them.

7. Being aggrieved by the three orders dated 20 October 2006 of the Assistant Registrar, the Petitioner-Society filed three Revision Applications before the Respondent No.3 Divisional Joint Registrar, Co-operative Societies. On 3 August 2007, the Respondent No.3-Divisional Joint Registrar dismissed the three Revision Applications and confirmed the three orders dated 20 October 2006 of the Asstt. Registrar, which orders are the subject matter of challenge in these Writ Petitions.

8. The said Respondents also filed Writ Petition No.1882 of 2007 before the Division Bench of this Court praying interalia for directions against BMC to order the Petitioner Society to accommodate them as members and for allotment of premises to them, which is stated to be pending.

9. On 11 June 2008, Chamber Summons No.357 of 2007 was taken out by the said Respondents in Writ Petition No.265 of 2000 which was directed to be heard alongwith the main Petition. On 7 October 2009, the Petitioner-Society withdrew their Writ Petition No.265 of 2000. On 5 November 2009, the said Respondents filed Notice of Motion No.579 of 2009 in Writ Petition No.265 of 2000 praying that the order dated 7 October 2009 in Writ Petition No.265 of 2000 disposing of the Writ Petition be recalled/set aside and be heard on merits alongwith Chamber Summons No.357 of 2007. On 18 March 2014, an order was passed by the Division Bench of this Court (Coram: S.J.Vazifdar & R.G.Ketkar, JJ.) in the said Notice of Motion No.579 of 2009 and Chamber Summons No.357 of 2007 in Writ Petition No.265 of 2000 recording that the withdrawal of Writ Petition No.265 of 2000 on 7 October 2009 shall not affect the rights, if any, of the Applicants (the said Respondents) or any of them in any manner whatsoever including in respect of the pending proceedings adopted

by the Applicants and in any proceedings that the Applicants may hereafter adopt.

10. I have heard learned Counsel for the parties and perused the material on record.

11. The issue raised in the present Petitions is essentially in relation to the Applications filed by the said Respondents under Section 23 of the MCS Act seeking directions against the Petitioner-Society to admit them as members of the Petitioner-Society which are allowed by the impugned orders. The grievance of the Petitioner-Society is that the said Respondents are not entitled to the membership of the Petitioner-Society in view of the conditions laid down in the letter of allotment of BMC dated 5 July 1985. The issue thus entirely turns on interpretation of the letter dated 5 July 1985 and subsequent letters/correspondence of the BMC. The submission of the learned Counsel for the Petitioner-Society is that considering the terms and conditions of the letter dated 5 July, 1985 of the Ward Officer (Estates) I/c. of BMC, the said Respondents are not entitled to the membership of the Petitioner-Society as there was no approval of the Deputy Municipal Commissioner (Improvements) for granting membership of the Petitioner-Society to the said Respondents.

12. While allowing the Applications of the said Respondents under Section 23 of the MCS Act, the Assistant Registrar in his order dated 20 October, 2006 in case of Mrs.Anuradha S. Ausekar (Respondent No.1 in W.P. No.2318 of 2007) held as follows:

“OPINION AND CONCLUSION:

In the present matter, considering the written and oral submission made by the Applicant and the opponents, arguments advanced by them and the documentary evidence adduced by them, it appears that, said plot of land has been allotted by the Brihanmumbai Municipal Corporation to the society. As per the conditions mentioned in letter dated 05/07/1985 issued by the Municipal Corporation, the society had 25 members and it was mentioned therein that for the remaining seats of membership, the staff members of the Municipal Corporation/ actual occupants in the tenements, shall be given membership as per the vacancy in the society, on priority and if such occupants do not approach for membership, the occupants directed to be admitted as members of the society by the Dy. Commissioner (Improvements) of the Municipal Corporation be admitted as members. The Applicant has been staying in the society building since last

so many years. As mentioned in the letter dated 05/07/1985 of the Dy. Commissioner, if a person residing in the building applies to the society seeking membership, such membership shall be given on priority.

In the reply dated 21/06/2006 issued by the society to the Applicant, it is mentioned that, as per the letter dated 05/07/1985 issued by the Municipal Corporation, it is not within the scope of the society to admit the Applicant as a member of the society. In fact, to accept or reject the membership is within the scope of the society. The society is empowered to take decision in this behalf after necessary compliance by the willing member. After seeking the membership from the Applicant, the said proposal ought to have forwarded to the concerned department of the Municipal Corporation for approval. However, it appears that the opponent society has not done so.

Though the Applicant had filed Application for membership with the society, other relevant documents are required to be produced. However, taking into account the aforesaid facts, since I am of the view that, it would not proper to deprive the Applicant from his membership, I pass the following order:

ORDER

1. *The Application No.26/2006 filed under section 23 of the Maharashtra Co-operative Societies Act, 1960 is allowed.*
2. *Yuvak Co-operative Housing Society Ltd., Sewri, Mumbai – 15 is directed to include Applicant in the list of members of the society, an entry to that effect be made in the share certificate and other membership record of the society within 30 days and a report to that effect be submitted to this office.*
3. *No order as to costs.”*

Somewhat similar orders have been passed by the Assistant Registrar in the case of Mr. Vishwas Pawar, Respondent No.1 in W.P. No.2329 of 2007 and Mr. Suhas Rane, Respondent No.1 in W.P. No.2328 of 2007.

13 Being aggrieved by the three orders of the Assistant Registrar, the Petitioner–Society filed three Revisions before the Divisional Joint Registrar. The Divisional Joint Registrar after hearing the parties by the impugned order dated 3 August 2007 in the case of Mrs. Anuradha S. Ausekar held as follows :

“ I have considered the submissions and arguments sought by both the sides. It is observed that the Respondent No.1 is employee/tenant of B.M.C. occupying the existing tenement and the main ground of

refusal of membership is approval for membership from Competent Authority of Bombay Municipal Corporation. From letter dated 05/07/1985 addressed to the promoters of proposed society from Ward Officer (Estates) item (2) it is evident that "the society shall accept the employees/tenants occupying the existing tenements on site on priority basis as members of society" is the condition for formation of society. Further, after registration a letter was addressed to secretary of society by Ward Officer (Estates) dated 29/01/1988 it is mentioned that society shall have to accommodate four additional members from amongst the municipal employees occupying staff quarters and also as per orders of Deputy Municipal Commissioner (Improvements) dated 20/12/1988 it is mentioned that allottees i.e. employees in occupation of tenements of Sewree on temporary basis, desiring of joining the society shall have to be admitted by the society and Shri Vishwas Pawar residing in "Vasahat" be admitted to membership of society. Further Applicant society has accepted the membership application from Respondent No.1 who is the existing tenant in the society premises and as per letter dated 20/06/1988 of Ward Officer (Estates) addressed to the secretary of society it is specifically mentioned that society have to accommodate Shri Pawar who has occupied the tenement vacated by Shri Palav and further vide letter dated 27/12/1988 Ward Officer (Estates) have informed the society that Shri Vishwas Pawar Municipal employee residing in the Vasahat be admitted to the membership of society and as the Respondent Assistant Registrar rightly considered the above facts while passing the impugned order I do not find it necessary to interfere in the matter. Considering all the above facts I pass the following order:

ORDER

1. The Revision Application is hereby dismissed.
2. Order dated 20/10/2006 passed by Assistant Registrar, C.S. F/S Ward, Mumbai u/s. 23(2) of M.C.S.Act is hereby confirmed.
3. No orders as to cost.”

Somewhat similar orders have been passed by the Divisional Joint Registrar in the case of Mr. Vishwas Pawar, Respondent No.1 in W.P. No.2329 of 2007 and Mr. Suhas Rane, Respondent No.1 in W.P. No.2328 of 2007.

14. From a bare perusal of the impugned orders of the Assistant Registrar and Divisional Joint Registrar it would be evident that the said Authorities have arrived at pure findings of facts, after considering the letter of allotment dated 5 July 1985 and the subsequent letters/correspondence, in concluding that the said Respondents were entitled to membership of Petitioner Society. It is not expected of this Court in the exercise of its writ jurisdiction to reappraise the concurrent findings of facts arrived at by the Authorities below. It cannot be said that there is any perversity or patent illegality in the impugned orders passed by the Authorities. The view of the Authorities is certainly a possible view.

15. In *Hari Vishnu Kamath v. Ahmad Ishaque and others*, **AIR 1955 SUPREME COURT 233**, the Supreme Court held as follows :

“21. Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in *Parry & Co. v. Commercial Employees' Association, Madras* MANU/SC/0050/1952 : (1952)ILLJ769SC , *Veerappa Pillai v. Raman and Raman L* MANU/SC/0057/1952 : [1952]1SCR583 td. and Others , *Ibrahim Aboobaker v. Custodian General* MANU/SC/0058/1952: [1952]1SCR696 and quite recently in *T. C. Basappa v. T. Nagappa* MANU/SC/0098/1954 : [1955]1SCR250 . On these authorities, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to

confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.”

In light of the above, the Petition is liable to be dismissed.

16. Even otherwise, I find that the Authorities have after appreciating the material on record arrived at correct findings. The allotment letter dated 5 July 1985 and the other letters/ correspondence clearly reveal that the said Respondents were entitled to membership of the Petitioner–Society. The said letter of allotment of BMC dated 5 July 1985 setting out the conditions for being admitted as the members of the Petitioner–Society, is extracted hereunder :

“MUNICIPAL CORPORATION OF GREATER
BOMBAY
No. Estates/22839/SO of 5th July, 1985.

Office of the
Ward Officer (Estates)
Municipal Corporation of
Greater Bombay
Shri Chatrapati Shivaji
Maharaj Market Building,
2nd floor, Palton Road,
Bombay – 400 001.

To,

A.S.Palav and Others,
Yuvak Co-operative Housing
Society (Proposed)
7, 8/6, 110 Municipal Tenements,

D.G.Mahajani Path,
Sewri, Bombay – 400 015.

Sub :-Request for conversion
of Blocks Nos. 6, 7 and 8
at D.G.Mahajani Path,
Sewri, Bombay 400 015 on
ownership basis.
Formation of Co-
operative Housing
Society.

Sir,

Ref :- Your representation
dated 5th June, 1985
to the Addl. M.C.(A).

I have to inform you that the Additional
Municipal Commissioner (A) has accorded
sanction to hand over the possession of a plot
of Municipal land admeasuring 2675.56
square yards (2237.92 sq.metres) as
requested by you to your proposed Co-
operative Housing Society on the following
conditions:

If you are willing to accept these
conditions, the necessary information may
please be submitted to this Office within 15
days from the date hereof in the proforma
attached herewith-

(1) The employees who are already
members of other co-operative Housing
Societies shall not be allowed to become
members of your proposed co-operative
Housing Society or alternatively shall have
option of becoming members of your Society
by surrendering their memberships in their
erstwhile societies to the Bombay Municipal
Corporation.

(2) Since there are only 25 members on your society for additional tenements to be constructed on the basis of the permissible F.S.I. for the land as referred to above, the society shall accept the employees/occupants occupying the existing tenements on the site on priority basis as members of your society.

(3) In the event of existing employees failing to accept the membership of your society for the additional tenements, other employees who may be nominee by the Bombay Municipal Corporation shall be accepted by the society and 'no' new members other than those intimated earlier shall be enrolled without the specific approval of the Deputy Municipal Commissioner (Improvements).

(4) During the progress of construction the members whose tenements are required to be demolished shall make their own temporary arrangements for transit accommodation.

(5) The development of the land shall be commenced within one year from the date of handing over possession of the land and shall be completed latest within 5 years from the date of handing over the possession of the land to the Society.

(6) If the above conditions are agreeable to you, you may inform accordingly after which question of granting further extension for continuation to occupy the quarters can be considered.

(7) These are the specific conditions and on hearing from you about the acceptance or otherwise to this office which without you are requested to arrange to obtain and furnish in the enclosed proforma I individual applications from the members of

your society and a consolidated list of members in the enclosed proforma II, to enable this office to take further steps to obtain the approval of the Corporation can be taken. Usual conditions for lease and for disposal of the Municipal buildings will be intimated in due course.

Yours faithfully,
Sd/-
Ward Officer (Estates) I/c.”
(emphasis supplied)

17. It would also be apposite to reproduce the Departmental communication of BMC dated 19/20 December 1988 which reads as under:

“MUNICIPAL CORPORATION OF GREATER
MUMBAI

No. Estates/ /SO dated 19.12.1988

D.M.C.(I)

Sir

Sub : Membership of Shri V.S.Pawar,
Municipal employee in the
Municipal employees' Co-op.
Housing Society known as
“Yuvak” at D.G.Mahajani Path
Sewri.

Ref : No.PPK/7626 pg 2.12.88 (Pg.3)

.....

In continuation of the office note dated 30.11.88 (Pg.3) it may be further stated that the Secretary of the Society was asked under this office letter dated 20.6.88 (Pg.5) to accommodate Shri V.S.Pawar in place of Shri Palav, Shri Pawar was also advised to

contact the Secretary of the Society for enrollment of his membership under this office letter (P.6). The Secretary of the Society vide his letter dated 7.7.88 (Pg.7 & 8) had informed this office that the name of Shri Pawar has been kept on the waiting list of the Society. It may be further mentioned that Shri V.S.Pawar working as Head Clerk in this office had also been informed verbally that the society has to accommodate him in the vacancies of 3 tenants who have shown their unwillingness to become the members of tenants of the Society.

In view of the above, a suitable D.R. to Shri Subhash Sawant, Chairman, Improvements Committee, is put up herewith for D.M.C.(I)'s approval and issue please.

Submitted please.

Sd/-
14.12.
W.O.(Estate)

W.O.(Estate)

It is complained that his name is not included in the list submitted by the 'Yuvak' Co-op. Society. No outsiders are to be enrolled in the proposal of Yuvak Co-op. Hsg. Society & question of preparing waiting list by the Yuvak Co-op. Hsg. Society does not arise. Every of the allottee i.e. employees in occupation of 110 tenements at Sewri on temp. basis, desires of joining the society shall have to be admitted by the society. However, those who have now shifted in their own accommodations in Co-op. Hsg. Societies elsewhere should not be allowed to become member of Yuvak Co-op. Hsg. Society.

In view of above, the secretary of the society may be requested to enroll the name

of Shri V.S.Pawar as their regular member and not on the waiting list.

Please report compliance with amended D.R. to the Chairman I.C. By 03.01.1989.

Sd/-
20.12
DMC(I)"
(emphasis supplied)

18. In the letter dated 24 October 2007 by the Ward Officer to the Petitioner Society, it has been stated as follows:

"In the meeting held in A.M.C. (City)'s Chamber on 18.10.97 at 3.00 p.m. on the above subject matter, it has been decided to get the details from each Municipal employee about the status of their original society at the time of temp. allotment of the staff quarter of 110 tenements, Sewri. As directed by A.M.C. (City) proforma for the information to be furnish by the allottee is enclosed herewith.

You are hereby requested to get the information filled in as per the accompanying proforma enclosed with supporting documentary proofs for the same from the concerned employee and submit to this office on or before 05.11.97 without fail."

19 From the aforesaid allotment letter dated 5 July 1985 and subsequent letters/correspondence it would be evident that BMC had made it clear that the membership of the Petitioner-Society should be

given to other municipal employees also who are occupying the staff quarters and desirous of becoming members. The letter dated 19/20 December 1988 extracted hereinabove, has also been signed by the Dy. Municipal Commissioner (Improvements) after the footnote. It is clearly stated by the Deputy Municipal Commissioner that every allottee i.e. employee in occupation of 110 tenements on temporary basis, desirous of joining the Petitioner–Society shall have to be admitted by the Petitioner- Society. As a matter of fact in the case of Vishwas Pawar (Respondent No.1 in Writ Petition No.2329 of 2007), there was a specific direction to the Petitioner-Society to enroll him as a member.

20. The earlier Applications of the said Respondents for membership of the Petitioner–Society were rejected by the Asstt. Registrar merely on the technical ground that the Applications were not in the form prescribed under section 23 of the M.C.S. Act. Hence, rejection of those Applications was not on merits and could not preclude the said Respondents from making fresh Applications and the contention on behalf of the Petitioner-Society that the second Applications were not maintainable cannot be countenanced. It is further required to be noted that the Petitioner-Society has not challenged letter dated 19/20 December 1988 and other

letters/correspondence referred to above. The said Respondents are BMC employees and have been allotted the staff quarters since 1985/1986. It is also noticed that the said Respondents were pursuing the matter with the Petitioner-Society and had applied to the Petitioner-Society for membership in the year 1986. Because of the various disputes/litigation, there was no construction and during the interregnum BMC had also cancelled the allotment of land in the year 1992 or thereabout. The subsequent letters of the BMC also suggest that the BMC was inclined to enroll more members of the Petitioner-Society. In these circumstances, I am not inclined to accept the contention on behalf of the Petitioner- Society that the Applications by the said Respondents for membership of the Petitioner-Society ought to have been dismissed on the ground of delay.

21. In the Affidavit-in-Reply filed by the BMC to the Petition there is no reference and/or any explanation offered with regard to the letter dated 19/20 December 1988 and other letters/correspondence of BMC. In view of the letter dated 19/20 December 1988 and other letters/correspondence referred to hereinabove, the eviction proceedings under Section 105B of the Mumbai Municipal Corporation Act initiated against the Respondents in the year 2007 would not be an impediment to the claim of the said Respondents for seeking

membership of the Petitioner Society. It appears that eviction proceedings were initiated against other BMC employees also. The Affidavits-in-Reply filed by said Respondents aver that the BMC has passed eviction orders even against three existing members so named in the said Affidavits. In any event, the impugned orders of the Assistant Registrar granting membership to the said Respondents were passed on 3 August 2007 and the eviction orders were passed later i.e. on 5 November 2007, which eviction orders were stayed by the Bombay City Civil Court in Appeal and the said Respondents continued to stay in their tenements. The proceedings pertaining to the eviction of the said Respondents is now subject matter of Writ Petition (L) No.4905 of 2009 filed by the BMC against the said Respondents wherein BMC has challenged the order of the Bombay City Civil Court allowing the Appeal of the said Respondents which Appeal was filed by the said Respondents against the order of eviction under section 105B of the MMC Act.

22. It is noticed that though a party before the Divisional Joint Registrar, BMC has not filed any Writ Petition challenging the impugned order of the Respondent No.3-Divisional Joint Registrar directing the Petitioner-Society to enroll the said Respondents as members. The letter of allotment dated 5 July 1985, the letter dated

19/20 December 1988 and the subsequent letters/correspondence clearly brings out that BMC was in support of its other employees occupying tenements in the said property, to become members of the Petitioner-Society and merely because the said Respondents came in occupation of their tenements after the allotment of land would not preclude them to be members of the Petitioner-Society. As a matter of fact the letter of allotment also provides that the Petitioner-Society shall accept further members on conditions stated therein. Pertinently, the Petitioner-Society accepts this position. Their contention however is that further members could be enrolled only upon approval of the Deputy Municipal Commissioner. It also required to be noted that initially there were 27 members of the Petitioner-Society which were subsequently reduced to 23 members only. In the circumstances the impugned orders rightly concluded that the said Respondents cannot be deprived of the membership of the Petitioner-Society.

23. For all the reasons stated above, no interference is warranted by this Court with the impugned orders. The Writ Petitions are accordingly dismissed. Rule is discharged in all the Petitions. No order as to costs.

24. It is clarified that the mere grant of membership of the Petitioner Society would not be construed to mean that the said

Respondents would automatically be entitled to the benefit of allotment of premises in the new buildings proposed to be constructed and such entitlement, if any, would have to be decided independently after considering all facts and circumstances of the case.

(A.A.SAYED,J.)

After pronouncement of the judgment, learned Counsel for the Petitioner-Society requests for continuation of the interim order dated 4 February 2008 staying the impugned order, for a period of eight weeks from today. Learned Counsel for the said Respondents opposes the same. Inasmuch as the stay has been operating from 4 February 2008, I am inclined to direct that the interim order dated 4 February 2008 shall continue to operate for a period of eight weeks from today.

(A.A.SAYED, J.)