

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

WRIT PETITION NO.2522 OF 2016

- | | |
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| 1. Shrirangrao Pandharinath Thube |] |
| R/At 6 Bhat Bungalow, Shivaji Nagar, |] |
| Pune-411 005. |] |
|
2. Vishnu Kashinath Devmare |] |
| R/at S.No.52/2 B, Parashar Society, |] |
| Chandannagar, Pune-411 014. |] |
|
3. Vishwas Khandu Shete |] |
| R/at S.No.52/2 B, Parashar Society, |] |
| Chandannagar, Pune-411 014. |] |
|
4. Bapurao Laxman Salke |] |
| R/at S.No.52/2 B, Parashar Society, |] |
| Chandannagar, Pune-411 014. |] |
|
5. Kashinath Jayantrao Valse |] |
| R/at Kalwad Vasti, Lohgaon Road, |] |
| Pune-411 032. |] |
|
6. Sou. Vaishali Balasaheb Kochale |] |
| R/at 5 th Maill, Vadgaon, Sheri, |] |
| Pune-411 014. |] |
|
7. Sou.Lata Ramchandra Devare |] |
| R/at B.T. Kawade Road, |] |
| Ghorpadi, Pune. |] |
|
8. Dr.Girsih Dattatraya Thube |] |
| R/at Bawdhan Pune. |]..Petitioners |

V/s.

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| 1. Deputy Registrar Co-operative Societies |] |
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- Pune City (5), Sakhar Sankul,]
Shivajinagar, Pune-411 005]
2. The Divisional Joint Registrar]
Pune City (5), Sakhar Sankul, Shivajinagar]
Pune-411 005.]
3. Parashar Sahakari Griha Rachana]
Sanstha Mrydt.6, Bhat Bungalow,]
Shivajinagar, Pune-411 005.]
4. The Administrator (Mr.Sayyad)]
C/o.Deputy Registrar Co-operative]
Societies Pune City(5), Sakhar Sankul]
Shivajinagar, Pune-411 005]
5. Shri.Dnyaneshwar Kerba Pathare]
6. Shri.Prashant Rambhau Pathare]
7. Shri.Vasant Kisanrao Pathare]
All R/at S.No.43, Pathare Mala,]
Pune Nagar Road, Chandannagar]
Pune-411 014.]
8. The Hon. Minister for Co-operation]
Mantralaya, Mumbai-400 032]
9. The State of Maharashtra]
Through Govt. Pleader]
High Court, A.S. Mumbai.]..Respondents

**WITH
WRIT PETITION NO.3170 OF 2016**

1. Shrirangrao Pandharinath Thube]
R/At 6 Bhat Bungalow, Shivaji Nagar,]
Pune-411 005.]
2. Vishnu Kashinath Devmare]
R/at S.No.52/2 B, Parashar Society,]
Chandannagar, Pune-411 014.]

3. Vishwas Khandu Shete]
R/at S.No.52/2 B, Parashar Society,]
Chandannagar, Pune-411 014.]
4. Bapurao Laxman Salke]
R/at S.No.52/2 B, Parashar Society,]
Chandannagar, Pune-411 014.]
5. Kashinath Jayantrao Valse]
R/at Kalwad Vasti, Lohgaon Road,]
Pune-411 032.]
6. Sou. Vaishali Balasaheb Kochale]
R/at 5th Maill, Vadgaon, Sheri,]
Pune-411 014.]
7. Sou.Lata Ramchandra Devare]
R/at B.T. Kawade Road,]
Ghorpadi, Pune.]
8. Dr.Girsih Dattatraya Thube]
R/at Bawdhan Pune.]..Petitioners

V/s.

1. Deputy Registrar Co-operative Societies]
Pune City (5), Sakhar Sankul,]
Shivajinagar, Pune-411 005]
2. The Divisional Joint Registrar]
Pune City (5), Sakhar Sankul, Shivajinagar]
Pune-411 005.]
3. Parashar Sahakari Griha Rachana]
Sanstha Mrydt.6, Bhat Bungalow,]
Shivajinagar, Pune-411 005.]
4. The Administrator (Mr.Sayyad)]
C/o.Deputy Registrar Co-operative]
Societies Pune City(5), Sakhar Sankul]

Shivajinagar, Pune-411 005]

5. Chandrashaikh Keshav Pingle]
R/at Flat No.3, Survey No.43,]
Parashwar CHS Ltd., Pune Nagar Road,]
Khedwadi, Pune-411 014.]

6. Laxmikant Gajanan Shinde]
R/at Flat No.65 & 66, Survey No.43,]
Parashwar CHS Ltd., Pune Nagar Road,]
Khedwadi, Pune-411 014.]

7. The Hon. Minister for Co-operation]
Mantralaya, Mumbai-400 032]

8. The State of Maharashtra]
Through Govt. Pleader]
High Court, A.S. Mumbai.]..Respondents

**WITH
CIVIL APPLICATION NO.617 OF 2016
IN
WRIT PETITION NO.2522 OF 2016**

1. Chandrashekhar Keshav Pingale]
R/at Plot No.3, S.No.43, Parshar Co-op.]
Hsg.Soc. Ltd., Pune Nagar Road,]
Khardi, Pune-411 014.]

2. Laxmikant Gajanan Shinde]
R/at Plot No.65-66, S.No.43, Parshar Co-Op.]
Hsg. Soc. Ltd., Pune Nagar Road,]..Applicants
Kharadi, Pune-411 014.](Intervenors)

IN THE MATTER BETWEEN

1. Shrirangrao Pandharinath Thube]..Petitioners
R/At 6 Bhat Bungalow, Shivaji Nagar,]
Pune-411 005.]

2. Vishnu Kashinath Devmare]
R/at S.No.52/2 B, Parashar Society,]
Chandannagar, Pune-411 014.]
3. Vishwas Khandu Shete]
R/at S.No.52/2 B, Parashar Society,]
Chandannagar, Pune-411 014.]
4. Bapurao Laxman Salke]
R/at S.No.52/2 B, Parashar Society,]
Chandannagar, Pune-411 014.]
5. Kashinath Jayantrao Valse]
R/at Kalwad Vasti, Lohgaon Road,]
Pune-411 032.]
6. Sou. Vaishali Balasaheb Kochale]
R/at 5th Maill, Vadgaon, Sheri,]
Pune-411 014.]
7. Sou.Lata Ramchandra Devare]
R/at B.T. Kawade Road,]
Ghorpadi, Pune.]
8. Dr.Girsih Dattatraya Thube]
R/at Bawdhan Pune.]..Petitioners

V/s.

1. Deputy Registrar Co-operative Societies]
Pune City (5), Sakhar Sankul,]
Shivajinagar, Pune-411 005]
2. The Divisional Joint Registrar]
Pune City (5), Sakhar Sankul, Shivajinagar]
Pune-411 005.]
3. Parashar Sahakari Griha Rachana]
Sanstha Mrydt.6, Bhat Bungalow,]
Shivajinagar, Pune-411 005.]

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|---------------------------------------|----------------|
| 4. The Administrator (Mr.Sayyad) |] |
| C/o.Deputy Registrar Co-operative |] |
| Societies Pune City(5), Sakhar Sankul |] |
| Shivajinagar, Pune-411 005 |] |
| | |
| 5. Shri.Dnyaneshwar Kebra Pathare |] |
| 6. Shri.Prashant Rambhau Pathare |] |
| 7. Shri.Vasant Kisanrao Pathare |] |
| All R/at S.No.43, Pathare Mala, |] |
| Pune Nagar Road, Chandannagar, |] |
| Pune-411 014. |] |
| | |
| 8. The Hon. Minister for Co-operation |] |
| Mantralaya, Mumbai-400 032 |] |
| | |
| 9. The State of Maharashtra |] |
| Through Govt. Pleader |] |
| High Court, A.S. Mumbai. |]..Respondents |

Mr.A.S. Desai a/w Mr. R.S. Ghatge a/w Mr.Amar Parsekar
for Petitioners in both Petitions.
Mr.M.S. Bane 'B' Panel for Respondent Nos.1 & 2.
Mr.PD. Dalvi for Respondent Nos.5 & 6 in Writ Petition
No.3170 of 2016.

CORAM : R.M. SAVANT, J.

DATE : 26th APRIL, 2016.

ORAL JUDGMENT :

1. At the outset the learned counsel for the petitioner Shri.Desai seeks deletion of Respondent Nos.3,4,5 and 6 in Writ Petition No.2522 of 2016 and deletion of Respondent Nos.5 and 6 in Writ Petition No.3170 of 2016. The said respondents are accordingly deleted from the above petitions at the risk of

the petitioners. Amendment to be carried out in the course of the day.

2. Rule, in both the petitions, having regard to the nature of the challenge raised made returnable forthwith and heard.

3. The Writ jurisdiction of this Court is invoked against the order dated 18-02-2016 passed by the Hon'ble Minister Cooperation, Marketing and Textiles Government of Maharashtra by which order the Appeals in question being Appeal No.504 of 2015 and 505 of 2015 came to be allowed and resultantly the order dated 08-05-2015 passed by the Divisional Joint Registrar allowing the Appeals filed by the petitioners came to be set aside and the order dated 03-04-2014 passed by the Deputy Registrar of Co-operative Societies, Pune under Section 77-A of the Maharashtra Co-operative Societies Act, came to be confirmed.

4. It is not necessary to burden this order with

unnecessary details. Suffice it would be to state that the Respondent No.7 in the above Writ Petition No.2522 of 2016 had made a complaint to the Deputy Registrar of Co-operative Societies, Pune that the society represented by the petitioners i.e. one Parashar Sahakari Grah Rachna Sanstha Maryadit is not furnishing him with the details that he had sought and that though repeated reminders were sent to the said society, the information was not provided by the said society. Upon receipt of the said complaint a notice dated 04-03-2014 came to be issued to Shri.S.P. Thube the Chairman of the said Society by the Deputy Registrar. The said notice under Section 89-A of the said Act calling upon the society to produce its record. The Chairman vide his letter dated 06-02-2014 informed the Deputy Registrar that the Society's record is under completion and therefore sought two months time to complete the same. After the receipt of the said reply it seems that the hearing was fixed on two occasions, on which occasion the said society did not remain present and the Deputy Registrar ultimately by his order dated 03-04-2014, on the ground that the society has not produced the record inspite of being called for, invoked powers

under Section 77-A of the said Act superseded the Managing Committees and appointed one Shri.Arun Sayed certified Auditor as an Administrator of the said society.

5. Aggrieved by the said order dated 03-04-2014 passed by the Deputy Registrar Co-operative Societies, Pune the petitioners took exception to the same by filing an Appeal before the Divisional Joint Registrar under Section 152 of the said Act. The Divisional Joint Registrar on the ground that in respect of the invocation of powers under Section 77-A notice was not issued to the petitioners as well as on the ground that the petitioners were not heard, set aside the order dated 03-04-2014 passed by the Deputy Registrar by his order dated 08-05-2015. The respondents which included the respondent No.7 in the above Writ Petition No.2522/2015 filed a Revision before the State Government. The said Revision was heard by the Hon'ble Minister Cooperation Marketing and Textiles, Government of Maharashtra. Though the order was challenged by the respondent no.7 by way of a Revision the Hon'ble Minister, it seems treated the same as an appeal and proceeded

to hear the same. The Hon'ble Minister on the ground that, when called upon to produce the record the society had asked for two months time and in spite of the two months period having been over the record has not been produced, came to a conclusion that the society was not functioning properly and in view thereof powers under Section 77-A(B)(1) were required to be exercised and an authorized officer was required to be appointed on the society. The Hon'ble Minister also observed that there was no merit in the contentions urged on behalf of the society and its office bearers that they were not heard prior to the Deputy Registrar passing the said order dated 03-04-2014. The Hon'ble Minister referred to the notices issued and observed that once the notices were issued, then it was the duty of the office bearers to keep themselves informed as regards the development in the proceedings. As indicated above it is by the impugned order dated 18-02-2016 the Revision which was treated as an Appeal came to be allowed by the Hon'ble Minister and the order dated 08-09-2015 came to be set aside by the Revisional Authority. The principal contention urged on behalf of the petitioners in the above

petition is that for invocation of the powers under section 77-A a particular procedure has to be followed in the matter of issuing the notices as also publishing the notice on the notice board of the society. It was the submission of the learned counsel that in the instant case the Deputy Registrar as well as the Hon'ble Minister have erred in relying upon the notice dated 04-03-2014 which was in respect of the proceeding under Section 89-A and not under Section 77-A of the said Act. It was therefore, the submission of the learned counsel Shri.Desai that the order passed by the Hon'ble Minister dated 18-02-2016 is vitiated on the said ground.

6. Per contra the learned AGP as well as the learned counsel Shri.P.D. Dalvi appearing for respondent Nos.4,5, and 6 in the companion petition sought to justify the order passed by the Hon'ble Minister but not with any deal of conviction.

7. Having heard the learned counsel for the parties I have considered the rival contentions. The issue that arises for consideration is as to whether an order under Section 77-A

superseding the Managing Committee and appointing an authorized officer could have been passed by the Deputy Registrar i.e. by the Respondent No.1 in both these petitions. It is required to be noted that the proceedings were triggered off on account of the complaint made by the Respondent No.7 in Writ Petition No.2522 of 2016. In so far as the respondent Nos.4 to 6 in the companion Writ Petition No.3170 of 2016 are concerned they have complained after the proceedings were initiated under Section 89-A, for action to be taken under Section 77-A. In so far as the action to be taken under Section 77-A is concerned the same is circumscribed by the procedure mentioned in the said provision. The said procedure contemplates that before making an order under Section 77-A the Registrar shall publish a notice on the notice board, head office of the Society inviting objections and suggestions with respect to the proposed order within the time specified in the notice and after considering all objections and suggestions received by him pass an order. The doing away with issuance of notice is also contemplated, but the same has to be in special circumstances mentioned in the second proviso to the said

provision. It is not the case of the respondents in the instant case that the cause for invocation of the second proviso had arisen in the instant matter. As indicated above the proceedings under Section 89-A were commenced with issuance of the notice dated 04-03-2014. The authorities have proceeded to invoke powers under Section 77-A on the ground that the record as directed by the authorities was not produced before the Deputy Registrar. If that be so then it was necessary for the Deputy Registrar to issue a notice under Section 77-A in the manner postulated in the said provision. However, both the Deputy Registrar as well as the Hon'ble Minister have fallen into an error in relying upon the notices issued under Section 89-A for the purposes of passing an order under Section 77-A. The Hon'ble Minister has also fallen into an error by treating the Revision filed by the respondent nos.4,5,6 and 7 as an appeal, when no second appeal would lie in terms of the scheme of the said Act. In my view therefore the impugned order dated 11-02-2016 passed by the Hon'ble Minister as also the order passed by the Deputy Registrar Co-operative Societies, Pune is required to be quashed and set aside and is

accordingly, quashed and set aside. In view thereof the order passed by the Divisional Joint Registrar does not survive.

8. It would be open for the authorities to proceed against the petitioner if they so deem it appropriate in accordance with law. The petitions are allowed to the aforesaid extent. Rule is accordingly, made absolute in the aforesaid terms with parties to bear their costs of the petition.

9. In view of the disposal of the Writ Petition, Civil Application No.617 of 2016 for impleadment does not survive and to accordingly stand disposed of as such. However, the applicants are at liberty to move the appropriate authority if the occasion arises and the disposal of the Civil Application by this Court in the circumstances mentioned above would not come in their way.

(R.M. SAVANT, J.)