

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

**WRIT PETITION NO.10729 OF 2016**

Anthony John Mendes

...Petitioner

vs.

Divisional Joint Registrar & Ors.

...Respondents

...

Mr. Vivek R. Walavalkar i/b Mr. Sameer R. Bhalekar for the petitioner.

Mr. Pandit a/w Mr. Shailesh I. Kanthoria for respondent Nos.3 & 4.

Ms. Aparna Wahatker, AGP for the State.

...

**CORAM : R. M. BORDE, J.**

**DATE : 19<sup>th</sup> SEPTEMBER, 2016.**

**P.C. :**

. Heard.

2. Rule.

3. With consent of learned counsel for the parties taken up for final hearing forthwith at the stage of admission.

4. The petitioner is objecting to the order passed by the Deputy Registrar, Co-operative Societies, Mumbai dated 17/12/2015 holding the petitioner disqualified to contest the election for the managing committee of the Society. The order has been passed under section 78(A)(1)(b) of the Maharashtra Co-operative Societies Act, 1960 which reads thus:

***“78. POWER OF REMOVAL OF COMMITTEE OR MEMBER  
THEREOF***

*(1) If, in the opinion of the Registrar, the committee of any society or*

*any member of such committee makes default, or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interests of the society or its members, or wilfully disobeys directions issued by the State Government, or by the Registrar for the purposes of securing proper implementation of co-operative policy and development programme approved or undertaken by the State Government or is otherwise not discharging its or his functions properly and diligently [or where a situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions] and diligently and the business of the society has or is likely to come to a stand-still, or where any member of such committee stands disqualified by or under this Act for being a member, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice and after consultation with the federal society to which the society is affiliated, by order—*

*(a) (i) remove the committee, and—*

*(ii) appoint a committee consisting of three or more members (who shall not be the members of the committees so removed) of the society in its place, or appoint one or more Administrators who need not be members of the society, but who shall not be the members of the committee so removed to manage the affairs of the society for a period not exceeding six months, which period, at the discretion of the Registrar, be extended by a further period not exceeding three months so, however, that the total period does not exceed nine months in the aggregate :*

*Provided that, the Registrar shall have the power to change the committee or any member thereof or the administrator or administrators appointed under paragraph (ii) at his discretion even before the expiry of the period specified in the order made under this sub-section ;*

*(b) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed :] [Provided that, the member who has been so removed, shall not be eligible to be re-elected, re-appointed, re-nominated, or re-co-opted, as a member of the Committee till the expiry of the period of next one full term of the Committee from the date on which he has been so removed.]”*

5. On perusal of the order, it transpires that the petitioner has not been removed as a member. However, he has been held not eligible to be re-elected or re-nominated as a member. He has been prohibited from contesting elections of the society. The order issued by the Deputy Registrar is not in consonance with section 78(A)(1) (b) or proviso to sub section 1(b) of section 78(A). The Deputy Registrar has also referred to the provisions of section 73CA of the Act. The action impugned in the petition does not fall within any of the sub- clauses of section 73CA. It does appear that the Registrar has passed an order without application of mind to the record of the case.

6. Without commenting on the merits of the contentions raised before me and without adverting to the reasons recorded by the Registrar for arriving at the conclusion since according to me the order is not in consonance with the provision of section 73CA or 78 (A) (1) (b) of the Act, the same deserves to be quashed and set aside and the same is accordingly quashed and set aside. It is clarified that this Court has not commented upon the correctness of the reasons recorded by the Deputy Registrar and that it would be open for the Authority to consider the case on its own merits. The order impugned in the petition passed by Deputy Registrar of the society dated 17/12/2015 and confirmed by the Divisional Registrar dated 8/8/2016, is quashed and set aside and the matter stands remitted back to the concerned officer for reconsideration in accordance with law. The concerned Authority i.e. the Deputy Registrar shall decide the matter after giving opportunity of hearing to the parties, as expeditiously within a period of 4 weeks from today. The parties assure to cause appearance before the concerned authority on 22/9/2016 and as such no separate notice requiring their presence shall be necessary. The parties also agree to co-operate the Deputy Registrar

in final disposal within the time stipulated above.

7. Learned counsel appearing for the respondent on instructions make a statement that his client will not act in any manner prejudicial to the interest of the Society during the intervening period, i.e. during pendency of proceedings before Deputy Registrar, Co-operative Societies .

8. Rule is accordingly made absolute. Parties to act on an authenticated copy, of this order.

**(R. M. BORDE, J.)**