

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION STAMP NO.4859 OF 2017**

- |    |                                           |                    |
|----|-------------------------------------------|--------------------|
| 1] | Prakash M Shah                            | ]                  |
|    | Adult, Indian Inhabitant, residing at     | ]                  |
|    | B-4/41, White Rose CHS Ltd. Khira         | ]                  |
|    | Nagar, S.V.Rd. Santacruz (W),             | ]                  |
|    | Mumbai – 400 054.                         | ]                  |
|    |                                           | ]                  |
| 2] | Mr. Mahendra B Parmar                     | ]                  |
|    | Adult, Indian Inhabitant, residing at     | ]                  |
|    | B-4/16, White Rose CHS Ltd. Khira         | ]                  |
|    | Nagar, S.V.Rd. Santacruz (W),             | ]                  |
|    | Mumbai – 400 054.                         | ]                  |
|    |                                           | ]                  |
| 3] | Mr. S B N Fernandez                       | ]                  |
|    | Adult, Indian Inhabitant, residing at     | ]                  |
|    | B-4/44, 45, 46, White Rose CHS Ltd. Khira | ]                  |
|    | Nagar, S.V.Rd. Santacruz (W),             | ]                  |
|    | Mumbai – 400 054.                         | ]                  |
|    |                                           | ]..... Petitioners |

**versus**

- |    |                                       |   |
|----|---------------------------------------|---|
| 1] | The Divisional Joint Registrar,       | ] |
|    | Co-operative Societies,               | ] |
|    | Mumbai Division, Malhotra House,      | ] |
|    | Mumbai 400 001                        | ] |
|    |                                       | ] |
| 2] | The State of Maharashtra,             | ] |
|    | Through Government Pleader,           | ] |
|    | High Court, Appellate Side, Bombay    | ] |
|    |                                       | ] |
| 3] | White Rose Co-operative Housing       | ] |
|    | Society Ltd. Having address at        | ] |
|    | B-4, Khira Nagar, S. V. Rd.           | ] |
|    | Santacruz (W), Mumbai – 400 054       | ] |
|    |                                       | ] |
| 4] | All Imam Hossain                      | ] |
|    | Adult, Indian Inhabitant, residing at | ] |
|    | B-4/36, White Rose CHS Ltd. Khira     | ] |
|    | Nagar, S.V.Rd. Santacruz (W),         | ] |
|    | Mumbai – 400 054.                     | ] |
|    |                                       | ] |

5] Mr. Ketan Seth ]  
Adult, Indian Inhabitant, residing at ]  
B-4/7, White Rose CHS Ltd. Khira ]  
Nagar, S.V.Rd. Santacruz (W), ]  
Mumbai – 400 054. ]..... Respondents.

Mr. G S Hegde i/by Ms. Pinky M Bhansali for the Petitioners.

Mrs. V S Nimbalkar, AGP, for the Respondent Nos.1 and 2.

Mr. Vishal Kanade a/w Mr. Rajendra Desai i/by Mr. Jayesh R Vyas for the Respondent No.4.

CORAM : R. M. SAVANT, J.

DATE : 20<sup>th</sup> February 2017

**ORAL JUDGMENT :**

1 Leave to amend so as to sue the Respondent No.3 Society through the Administrator, Shri Suresh Khedekar is granted. The learned counsel for the Petitioners also seeks deletion of the Respondent No.5. The Respondent No.5 is accordingly deleted at the risk of the Petitioners. Amendment to be carried out forthwith.

2 Rule, considering the nature of the challenge raised, made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 31/01/2017 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai by which order the Revision Application filed by the Respondent No.4 herein came to be allowed and resultantly the order dated 10/07/2015 passed by the Deputy Registrar, Co-operative

Societies, H/W-Ward, Mumbai came to be quashed and set aside.

4           It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the cause for filing the Revision Application by the Respondent No.4 was the said order dated 10/07/2015 passed by the Deputy Registrar under Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 (for short “the said Act”) thereby removing the Respondent No.4, and Smt. Bina Choudhary and Shri Ketan Seth being the Chairman and Treasurer of the Respondent No.3 Society. The said removal was pursuant to the complaint made by the Petitioners herein on the ground that the Annual General Body Meeting for the year 2013-2014 was not held by the said office bearers of the Respondent No.3 Society. The Deputy Registrar after following gamut of process of issuing notices etc and after giving the parties an opportunity to file their replies had passed the said order dated 10/07/2015 under Section 75(5) of the said Act and appointed the authorized officer to take charge of the affairs of the Respondent No.3 society and has also disqualified the Respondent No.4 herein and the Chairman and Treasurer of the said Society for a period of 5 years.

5           It seems that the Chairman and and Treasurer i.e. Smt. Bina Choudhary and Shri Ketan Seth accepted the order dated 10/07/2015 passed by the Deputy Registrar as they did not join the Respondent No.4 in filing the

instant Revision being No.244 of 2015 filed before the Divisional Joint Registrar under Section 154 of the said Act. The treasurer, Ketan Seth was joined as Respondent No.6 in the said Revision. Suffice it would be to state that earlier the Divisional Joint Registrar dismissed the Revision filed by the Respondent No.4 by order dated 06/11/2015. The rejection of the Revision was on the grounds mentioned in the said order dated 06/11/2015. The rejection of the Revision Application resulted in the Respondent No.4 filing a Writ Petition in this Court being Writ Petition No.12065 of 2015. This Court disposed of the said Writ Petition by order dated 29/11/2016 thereby set aside the order dated 06/11/2015 passed by the Divisional Joint Registrar and remanded the matter back to the Divisional Joint Registrar for a de-novo consideration of the Revision Application in terms of the directions as contained in the said order dated 29/11/2016. The Divisional Joint Registrar was however directed to decide the Revision Application within the time frame mentioned in the said order dated 29/11/2016. The said order dated 29/11/2016 was challenged by the Respondent No.4 by filing SLP (Civil) No.35738 of 2016. The said SLP came to be dismissed by the Apex Court by order dated 06/12/2016 and the Respondent No.4 who was the Petitioner before the Apex Court was directed to hand over the charge to the Administrator by 5.00 pm by 07/12/2016. It seems pursuant to the said order dated 06/12/2016 the charge was handed over by the Respondent No.4 to the Administrator, however, there is some dispute as regards whether the entire

record has been handed over by the Respondent No.4 to the Administrator. It is not necessary for this Court to go into the said aspect in the instant Petition.

6           The Revisionary Authority before whom the Revision Application was pending i.e. the Divisional Joint Registrar adjudicated upon the said Revision Application and has by the impugned order dated 31/01/2017 allowed the Revision Application and as indicated herein above has thereby set aside the order dated 10/07/2015 passed by the Deputy Registrar, Co-operative Societies, H/W-Ward, Mumbai under Section 75(5) of the said Act. Having regard to the nature of the proceedings being one under Section 75(5) of the said Act, the issue before the Divisional Joint Registrar was whether the Annual General Body Meeting was in fact held on 09/08/2014 as claimed by the Respondent No.4, in support of which claim the Respondent No.4 seeks to rely upon the agenda of the said meeting which was to be held on 09/08/2014. The controversy has arisen in view of the fact that out of the 16 persons who are said to have attended the meeting, 8 persons had filed affidavit before the Deputy Registrar stating in the said affidavit that they did not attend any such Annual General Meeting on 09/08/2014 and in fact no such meeting was held on the said day. The Divisional Joint Registrar as can be seen from the impugned order can be said to have appreciated the controversy that was before him in the proceedings by way of Revision. He has adverted to Section 75(5) of the said Act as also the scope of his jurisdiction

under Section 154 of the said Act. However, he has after adverting to the judgment of this Court wherein it has been held that the issue as regards whether a meeting in fact was held or not would be an issue for a dispute under Section 91 of the said Act has thereafter gone on to observe that “prima facie the meeting can be said to have been held on 09/08/2014 on the basis of the material on record”. He thereafter reiterated the said prima facie conclusion in the penultimate paragraph of the impugned order.

7            Having regard to the provisions of Section 75(5) of the said Act which confers powers on the authorities under the said Act to remove the office bearers on the default committed by them in holding the Annual General Meeting. The Divisional Joint Registrar ought to have appreciated that he was obliged to record a conclusion one way or the other whether in fact the Annual General Meeting was held on 09/08/2014 and could not have reached a prima facie conclusion. The powers under Section 75(5) can be exercised only after the eventualities in the said provision arise. The eventuality for exercise of the powers under the said provision in the instant case was the non holding of the Annual General Meeting by the office bearers i.e. the Respondent No.4 who was at the relevant time were the Secretary and the Chairman and the Treasurer of the Respondent No.3 Society in the year 2013-2014. The Divisional Joint Registrar therefore ought to have adjudicated upon the Revision on the basis of the findings that were recorded by the Deputy

Registrar which were already on record. By not exercising the said power and by arriving at a prima facie conclusion, the Divisional Joint Registrar has not exercised the powers that are vested in him.

8           In my view, therefore, the impugned order dated 31/01/2017 passed by the Divisional Joint Registrar would have to be quashed and set aside and the matter would have to be relegated back to the Divisional Joint Registrar for a de-novo consideration of the said Revision. Hence the following directions :-

- A]       The impugned order dated 31/01/2017 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai is accordingly quashed and set aside and the Revision Application is relegated back to the Divisional Joint Registrar for a de-novo consideration.
  
- B]       The Divisional Joint Registrar to adjudicate upon the said Revision Application having regard to the scheme as contained in Section 75 of the said Act and arrive at a conclusion as to whether the Annual General Meeting was held on 09/08/2014 or not on the basis of the material on record.

- C] Since the matter is remanded back to the Divisional Joint Registrar, the Administrator who is in-charge of the Respondent No.3 Society would continue to be in office during the currency of the Revision Application and for a period of one week thereafter in the event the Revision Application is decided against the Petitioners herein.
- D] Needless to state that the contentions of the parties are kept open for being adjudicated upon by the Divisional Joint Registrar.
- E] The Divisional Joint Registrar would be well advised to pass a speaking order dealing with the contentions of the parties.
- F] On remand, the Divisional Joint Registrar to decide the Revision Application latest by 31/03/2017. The parties to appear before the Divisional Joint Registrar on 06/03/2017 at 3.00 pm. The parties are at liberty to file further pleadings and documents, however, the same to be done on 06/03/2017 when the parties would appear before the Divisional Joint Registrar or within such further time as the Divisional Joint Registrar may grant.
- G] The above Writ 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]**