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

WRIT PETITION NO.5720 OF 2017

Shri Raju Shah & Ors.	...Petitioners
Vs	
Ld Divisional Joint Registrar & Ors.	...Respondents.

**WITH
WRIT PETITION NO.5721 OF 2017**

Shri Raju Shah & Ors.	...Petitioners
Vs	
Ld Divisional Joint Registrar & Ors.	...Respondents.

Mr. Manoj A. Patil for Petitioners.
Ms. Vaishali Nimbalkar, AGP for State.
Mr. M.J. Chetiwal for Respondent No.3.

**CORAM: A.S. GADKARI. J.
DATE: 14 AUGUST 2017.**

P.C.:

1] By the aforestated two separate writ petitions filed under Article 227 of the Constitution of India, the petitioners have challenged the common Order dated 20th April 2017 passed by the Divisional Joint Registrar, Co.Op. Societies, Mumbai Division, Mumbai in Revision Application No.502 of 2016 under Article 154 of the Maharashtra Co-

Operative Societies Act, 1960 (for short 'M.C.S. Act') and in Appeal No.414 of 2016 under Section 152 of the M.C.S. Act thereby confirming the Orders dated 19.8.2016 passed by the Assistant Registrar, F/N Ward, Mumbai under Section 75(5) of the M.C.S. Act and Order dated 22.8.2016 passed by the Assistant Registrar, F/N Ward, Mumbai under 77A (1-a) (1-b) of M.C.S. Act respectively.

2] The record indicates that the Assistant Registrar, Co-Operative Societies during the course of inspection of the record of respondent No.4-Society found material irregularities in its functioning. It observed that, Annual General Meetings were not held within the stipulated period; the Society did not adopt model bye-laws; Society did not submit the mandatory returns On-line to the concerned Department; audit reports were not submitted to the concerned Authorities and most importantly Society did not maintain sinking funds account which is a mandatory requirement under the bye-laws framed under the Maharashtra Co-Operative Societies Act, 1960 (for short 'M.C.S. Act).

A notice dated 9th May 2016 was issued to the Managing Committee of the Society by the Assistant Registrar i.e. respondent No.2. The Society in its reply admitted that it did not adopt model bye-laws of

the Societies and did not open an account and/or deposited sinking funds in a separate account. After taking into consideration the say of the respondent No.4, the respondent No.2 passed an Order dated 19.8.2016 under 75(5) of the M.C.S.Act, disqualifying the Managing Committee of the Society for a period of 3 years. In furtherance of the Order dated 19.8.2016 passed under Section Section 75(5) of M.C.S. Act, the respondent No.2 by a subsequent Order dated 22.8.2016 under Section 77A(1-a) (b-1) of M.C.S. Act, appointed an Administrator over the respondent No.4- Society.

3] The learned Counsel for the petitioners submitted that it was the Secretary of the Society who was under obligation to conduct the Annual General Meeting within stipulated period, to maintain the accounts of the Society and was also duty bound to comply with the mandatory requirements, as contemplated under the bye-laws of the Societies. He submitted that, petitioners cannot be held responsible for lapses on the part of the Secretary of the Society. In support of his contention, he relied upon the decision of this Court in the case of *Gaurav K. Desai Vs.The State of Maharashtra & Ors. [Writ Petition No.11699 of 2014 & Writ Petition No.11700 of 2014 dated 6th February 2015]*. He submitted that, petitioners,

though belatedly have conducted Annual General Meeting and also subsequently adopted model bye-laws of the Societies. He submitted that the petitioners have sufficiently complied with the defects/lacunas which were noticed by the Assistant Registrar at the time of inspection and therefore the impugned Orders may be set aside.

4] As stated earlier, the record clearly indicates that on the date of inspection material irregularities were found by the Assistant Registrar and after finding material lapses on the part of the Managing Committee issued notice dated 9.5.2016 and thereafter passed impugned Order dated 18.8.2016, disqualifying the Managing Committee of the Society under Section 75(5) of M.C.S. Act. By a subsequent Order dated 22.8.2016 under Section 77 A of the M.C.S. Act, the Assistant Registrar appointed Administrator upon the Society. The petitioners have admitted lapses on their part in their reply to the notice dated 9.5.2016.

According to the petitioners the lapses so observed by the Assistant Registrar were on the part of the Secretary of the Society who was under obligation to do the needful. The submission of the petitioners cannot be accepted for the reason that, the petitioners being the members of the Managing Committee have equal responsibility to comply with the

mandatory duties prescribed under the bye-laws of the Society and petitioners cannot be permitted to raise the said specious plea, which according to me amounts to shrugging of the responsibility from performing lawful duties.

As far as the reliance on the decision in the case of *Gaurav K. Desai Vs. The State of Maharashtra & Ors. (supra)* by the petitioners is concerned, the said decision is rendered entirely on different set of facts and is of no avail to the petitioners in view of the facts of the present case.

5] The respondent No.2, after taking into consideration material available before it, including the inspection report has passed Orders dated 19.8.2016 and 22.8.2016 which are confirmed by the respondent No.1 by its Order dated 20.4.2017. Both authorities below have recorded concurrent findings of facts. After perusing the entire record, it appears to me that there is no error or illegality either in law or on facts committed by both the authorities below and the interference by this Court under Article 227 of the Constitution of India is unwarranted.

6] Both petitions are accordingly dismissed.

(A.S. GADKARI, J.)