

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

**WRIT PETITION NO. 4251 OF 2013
WITH
CIVIL APPLICATION NO. 1150 OF 2017**

Navroze Manekji Havewala And Ors	...Petitioners
<i>Versus</i>	
State Of Maharashtra Through Its Secretary Ministry of Cooperation & Ors.	...Respondents

**CIVIL APPLICATION NO. 933 OF 2017
IN
WRIT PETITION NO. 4251 OF 2013**

Salsette Parsis Co. Op. Housing Society	...Applicant
<u>IN THE MATTER BETWEEN :</u>	

Navroze Manekji Havewala And Ors	...Petitioners
<i>Versus</i>	
State of Maharashtra & Ors.	...Respondents

**CIVIL APPLICATION NO. 2613 OF 2013
IN
WRIT PETITION NO. 4251 OF 2013**

Pheroze Tavit	...Applicant
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IN THE MATTER BETWEEN :

Navroze Manekji Havewala And Ors.	...Petitioners
<i>Versus</i>	
State of Maharashtra And Ors.	...Respondents

**CIVIL APPLICATION (ST) NO. 14885 OF 2017
IN
WRIT PETITION NO. 4251 OF 2013**

F.H. Wadia	...Applicant
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IN THE MATTER BETWEEN :

Navroze Manekji Havewala And Ors. ...Petitioners

Versus

State of Maharashtra & Ors. ...Respondents

Mr.Navroze M. Havewala-Applicant in person present.

Ms.Devyani Kulkarni for the Applicant in CAW No.933/2017 and Respondent No.5 in CAW No.1150/2017.

Mr.Jeetendra Ranawat i/b Waquar Ahmed for the Petitioner.

Mr.S.H. Kankal, AGP for Respondent-State.

CORAM : M. S. SONAK, J.

DATE : 14th SEPTEMBER 2017

P.C.

1. Heard learned counsel for the parties.
2. Writ Petition No.4251 of 2013 was instituted to question the orders dated 11th October 2011 and 12th April 2013 as well as certain other orders by which an Administrator was appointed to govern the affairs of the Salsette Parsee Co-operative Housing Society (Society).
3. The case of the petitioners-Managing Committee members was that their term had commenced in November 2011 and in the ordinary course was to conclude on 31st December 2014

i.e. within three years. The petitioners therefore contended that there was no warrant for appointment of Administrator to govern the affairs of the society. The petitioners also placed reliance upon the 97th Constitutional Amendment and in terms thereof, had contended that notwithstanding the provisions in their own bye-laws, the term of the managing committee of the society ought to be treated as five years. On such basis, the petitioners contended that they had a right to continue to manage the affairs of the society at least upto 11th November 2016.

4. This Court, by its order dated 06th March 2014, granted a stay on the appointment of Administrator. Rule was also issued in this petition, which was made returnable after six months.

5. This Court's order dated 06th March 2014 reads thus :-

“Heard learned counsel appearing for the respective parties.

2. Perused the provisions of Articles 243ZK and 243ZT of the Constitution of India. Perused the Maharashtra Ordinance No.VI of 2013 and clause 44 thereof. Sub-section (1) of Section 78A, has no application to a society, where there is no Government shareholding or loan or financial assistance in terms of

*any cash or kind or any guarantee by the Government. Prima-facie, the order appointing administrator on Co-operative Housing Society, of which the petitioners are members, cannot be sustained. Therefore, **Rule.** Rule is made returnable after six months.*

3. The ad-interim relief granted earlier to continue till the next date.”

6. Prior to the making of the aforesaid order, since, it was apprehended that some Annual General Body Meeting would be held, this Court, by its order dated 28th October 2013 had granted interim relief directing the petitioners not to hold Annual General Meeting till 20th November 2013. To my mind, this interim order, has no relevance as of today, when admittedly, the initial term of three years of the petitioners has come to end on 31st December 2014. Further, even if, the contentions of the petitioners on the basis of the 97th Amendment to the Constitution are to be accepted, their term, has come to an end on 11th November 2016. As of date, the petitioners, perhaps by misinterpreting the orders made by this Court from time to time, insist upon continuing in the management of the society. At the same time, as will be noticed hereafter, efforts are being made by the petitioners to see that no elections take place.

7. Mr.Navroze Havewala who was earlier appearing in this petition in person but who has now been declined permission by the Committee to appear in person is in the Court today. Although, permission was declined to him, to appear in person and the petitioners are represented by an Advocate, Mr.Navroze Havewala intervenes to say that there is some notification issued by the State Government which states that until elections are held, the existing committee members are entitled to continue to govern the affairs of the society.

8. This may or may not be the position. However, the petitioners, cannot, by misinterpreting judicial orders insist to continue in management even though, their term, in terms of their own byelaws has come to an end on 31st December 2014 and their term, as per their contention based on 97th Amendment to the Constitution of India, has come to an end on 11th November 2016. Possibly to take benefit of such alleged notification, the petitioners were to protract their matter and obstruct the conduct of elections.

9. The main writ petition has obviously worked itself out or in any case, the relief, has been rendered infructuous. The cause of action instituting the main petition was appointment of the

Administrator at the stage when the petitioners claimed to be in the management of the affairs of the society. The term, and even the extended term as per their own contention, has admittedly come to an end. On account of the interim order granted by this Court on 06th March 2014, the appointment of the Administrator was stayed and the petitioners, continued to govern affairs of the society not only during their original term, but also during their extended term. After 11th November 2016, however, the petitioners, cannot claim any unfettered right to govern the affairs of the society, in the facts of the present case.

10. Although, this petition has been rendered infructuous, the petitioners, have resorted to taking up several Civil Applications only to confuse and obfuscate the issue. One of the applications i.e. Civil Application No.933 of 2017 seeks direction to the State Co-operative Election Authority to conduct elections to the society since, it is conceded that the term of the society has expired on 30th November 2016. This Civil Application, is not an innocuous as it appears because in the prayer clause, the applicants, have chosen to add the words which are italicized for ready reference.

“i. This Hon'ble Court be pleased to direct the State Co-operative Election Authority and the Deputy

registrar to expeditiously conduct the elections for appointing the Managing Committee for the Applicant Society, whose term has expired on 30-11-2016, ***without disqualifying any members.***

ii. For such other orders as are necessary to do complete justice to the Petitioners in the facts and circumstances of this case.”

11. As noted earlier, the main petition was to challenge the appointment of the Administrator during the term of the office of the petitioners. Now, the petitioners in the main petition, which has already been rendered infructuous seek to go on adding issues and expanding its scope. Since, the main petition is not at all concerned, with the issue of qualification or disqualification of the petitioners, there was absolutely no justification on the part of the petitioners to add aforesaid italicized words in their prayer clause in their Civil Application No.933 of 2017. As noted earlier, the only objective appears to be to protract their matter, misinterpret the interim order and on such basis continue in office, without facing elections.

12. Some time in 2015, the State Co-operative Election Authority in fact appointed an election officer for holding election of the society. Again, the petitioners, took out the Civil Applications

raising several contentions as to the manner in which the elections are to be held. They contended that this is a 'C' class society and therefore, the elections are required to be held in a particular manner. The learned counsel for the petitioners insist that the law permits the petitioners from raising all such contentions. The law, no doubt to permits parties to raise contentions. However the law also provides for the forum and the manner in which contentions may be raised. The law also provides for the stage of which such contentions are to raised. In a petition, which is already rendered infructuous, the petitioners, cannot insist upon raising all such issues by taking out Civil Applications, the purpose of which, appears to be only to delay the election process and in the meanwhile continue to govern the affairs of the society long after the expiry of their term. The jurisdiction under Article 226 and 227 of the Constitution of India cannot be used or rather abused for such purposes. From the perusal of the Civil Applications, it is very clear that the entire objective of the petitioners is to cling to the management of the society and frustrate any realistic attempts for conduct of elections.

13. The latest Civil Application seeks a stay on the order dated 25th April 2017 by which an Administrator has been appointed

to govern the affairs of the society. It is not understood as to how such a relief can be applied for by taking out a Civil Application of this nature and that to, at this stage, when the petitioners, admittedly can claim no legal right to continue to govern the affairs of the society beyond 11th November 2016 or 30th November 2016.

14. In the normal course, even assuming that there does exists a notification which permits the existing Managing Committee members to continue in the management until fresh elections are held, the facts and circumstances of the present case, militate against the adoption of this normal procedure. The existing committee members cannot, by misinterpreting the interim relief granted by this Court and by repeatedly taking out Civil Applications and raising contentions which are extraneous to the issue raised in the main petition frustrate the attempt to hold elections. Upon success in postponing the elections, the petitioners, cannot insist upon continuing in governance of the affairs of the society on the spacious plea that they have some unfettered right to do so until the elections are held. At least this Court, cannot lend assistance for the perpetuation of such a situation.

15. Accordingly, the petition is dismissed as infructuous.

The Civil Applications do not survive and the same are also dismissed. The Administrator appointed by order dated 25th April 2017 to take charge forthwith and the State Cooperative Election Authority is directed to commence and complete the election process of the managing committee of the society as expeditiously as possible and in any case within a period of three months from today.

16. All concerned to act on the basis of the authenticated copy of this order.

17. After this judgment was dictated, the learned counsel for the petitioners points out that there is no notification which permits the petitioners to continue after the expiry of their term and until fresh elections are held, but there is only some letter. This is noted.

18. At this stage, the learned counsel for the petitioners request for a stay of six weeks on the appointment of the Administrator. In the facts and circumstances of the case, there is no ground for grant of stay. It is pertinent to note that the petitioners themselves have applied for holding of elections. If the petitioners were genuinely interested that elections were held, the

prayer for stay would never have been made. From this, it is quite clear that the petitioners, despite the expiry of their term wish to cling to office and frustrate any efforts of holding fresh elections to the managing committee, even though their term has expired in 2014 or in any case in November 2016.

(M. S. SONAK, J.)