

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

**WRIT PETITION STAMP NO.35578 OF 2016**

**The Kanakiya Park Co-Op. Society Ltd.,  
Kanakia Park-II, Plot No.778-A,  
Thakur Complex, Kandivali,  
(East), Mumbai 400 101.**

**..Petitioner**

**Versus**

**The Minister for Cooperation,  
Mantralaya, Mumbai and others**

**..Respondents**

**Shri. K. T. Bubu i/by Shri. Sachin P. Borhade for the Petitioner.**

**Shri. S. D. Rayrikar, AGP for the Respondent Nos.1, 3 & 7.**

**Shri. Niraj G. Bidawatka, C. A. for Respondent No.5 appears in person.**

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

**DATE : 28<sup>th</sup> FEBRUARY, 2017**

**PC.**

1           The writ jurisdiction of this Court is invoked against the order dated 03.12.2016 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation (Marketing and Textiles), Government of Maharashtra, by which order, the Revision Application filed by the Petitioner society came to be dismissed and resultantly, the order dated 15.03.2016 passed by the Divisional Joint Registrar and the order dated 10.08.2015 passed by the Deputy Registrar, Co-operative Societies came to be confirmed.

2           The Respondent No.5 herein is a member of the Petitioner

society. The dispute which has given rise to the proceedings before the authorities is in respect of the inclusion of an amount of Rs.67,000/- in the monthly maintenance bill of the Respondent No.5 herein in respect of the flat in question. The said amount is the amount which has been fixed by the Petitioner society pursuant to the general body resolution dated 20.07.2014 passed by the society. By the said resolution, the society had resolved to recover the said amount of Rs.67,000/- from the Respondent No.5 as also an amount of Rs.979/- which was included in the bill when the administrator was in-charge of the Petitioner society.

3           It seems that the Respondent No.5 herein had filed a dispute in the Co-operative Court being Dispute No.CC/III/165 of 2012 inter-alia challenging the notice dated 10.01.2012 calling the general body meeting on 22.01.2012 on the ground that the then managing committee was not empowered to call meeting on account of its resignation submitted to the Registrar on 05.09.2011. Whilst the said dispute was pending and since the resolution came to be passed by the Petitioner society on 20.07.2014, the Respondent No.5 had filed Misc. Application in the said dispute for challenging the inclusion of the sum of Rs.67,000/- in the monthly maintenance bill. It seems that contemporaneously the Respondent No.5 had also moved the concerned Deputy Registrar of Co-operative Societies against the said inclusion. In so far as the Misc. Application is concerned,

the Co-operative Court had stayed its hands as the Respondent No.5 had also moved the Deputy Registrar and the Co-operative Court was of the view that the orders passed by the Deputy Registrar on the said application be awaited. The Deputy Registrar in turn had stayed his hands as the Co-operative Court was seized with the matter. The Co-operative Court thereafter by order dated 31.12.2014 rejected the said Misc. Application on the ground that the Respondent No.5 may file a dispute challenging the said resolution dated 20.07.2014 and that the scope of the present dispute cannot be enlarged so as to include a challenge to the said resolution. After the said Misc. Application was rejected by the Co-operative Court, the Deputy Registrar, Co-operative Societies by order dated 22.01.2015 directed the Petitioner society to delete inclusion of Rs.67,000/- and Rs.979/- from the monthly maintenance bill of the Respondent No.5. This direction was issued, as the Deputy Registrar was of the view that the claim of the said amounts was not based on any bye law of the Petitioner society. Since the order passed by the Deputy Registrar dated 22.01.2015 was not being complied with by the Petitioner society, the Deputy Registrar issued further directions under Section 79(2)(a) of the Maharashtra Co-operative Societies Act, 1960 (For short "the MCS Act") by order dated 23.02.2015 and further order dated 10.08.2015 passed under Section 79(2)(b) of the

MCS Act calling upon the Petitioner society to comply with the directions as contained in the order dated 22.01.2015.

4           The Petitioner society filed an Appeal against the order under Section 79(2)(b) of the MCS Act appointing the authorized officer to carry out direction as contained in the order passed under Section 79(2)(a) of the MCS Act. It seems that the original order dated 22.01.2015 as also the order passed under Section 79(2)(a) of the MCS Act was not challenged by the Petitioner society. Suffice it would be to state that the Appeal filed by the Petitioner came to be dismissed by the Divisional Joint Registrar by order dated 15.03.2016. The said order dated 15.03.2016 passed by the Divisional Joint Registrar was taken exception to by the Petitioner by filing Revision Application before the State Government. The Revision Application was heard by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra who by the impugned order dated 03.12.2016 has dismissed the Revision Application. The Revisionary Authority did not find any reason to interfere with the direction issued under Section 79(2)(b) of the MCS Act as the directions issued by the Deputy Registrar of Co-operative Societies to the Petitioner society were not being complied by it. As indicated above, it is the said order dated 03.12.2016 which is taken exception to by way of the above Petition.

5           The principal contention urged by the Learned Counsel for the Petitioner is that the Deputy Registrar could not have exercised jurisdiction in a matter which is covered by a resolution passed by the society and the remedy if any available to the Respondent No.5 was to file a dispute in the Co-operative Court. It was also the submission of the Learned Counsel that an order passed without jurisdiction is a nullity and seeks to place reliance on the judgment of the Apex Court reported in 1996 SCC (4) 178 in the matter of Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another.

6           Per contra, the party in person who is the son (Power of Attorney holder) of the Respondent No.5 would submit that the Petitioner having not challenged the order dated 22.01.2015 as also the order passed under Section 79(2)(a) of the MCS Act now cannot question the said orders in the above Writ Petition. The party in person would point out that the Registrar had to take coercive steps to carry out the directions as mandated by the order dated 22.01.2015 which the authorized officer has done so pursuant to the directions issued under Section 79(2)(b) of the MCS Act. The party in person would therefore contend that no interference is called for with the impugned order passed by the Revisionary Authority.

7            Having heard the Learned Counsel for the Petitioner and the party in person. The question that arises is whether the directions of the nature issued by the Deputy Registrar could have been issued. It is required to be noted that an amount of Rs.67,000/- which is a substantial amount was sought to be included in the monthly maintenance bill of the Respondent No.5 on account of the resolution dated 20.07.2014 passed by the general body the Petitioner. The said amount was for recovery of the amount which the society had expended for fighting the litigation filed by the Respondent No.5. Pertinently, the bye laws which have been adopted by the Petitioner society does not contain any such bye law under which recovery of such a nature could be made against a member. It is in the said context that the Deputy Registrar, Co-operative Societies had deemed it appropriate to interfere in a matter where an amount was sought to be recovered by the Petitioner which recovery was ex-facie beyond the bye laws of the Petitioner society. The said order passed by the Deputy Register has been confirmed by the Divisional Joint Register in Appeal and thereafter by the Revisionary Authority in Revision. It is required to be noted that the Petitioner did not comply with the order dated 22.1.2015 passed by the Deputy Registrar which resulted in the directions being issued under Section 79(2)(a) of the MCS Act and thereafter under Section 79(2)(b). In fact, it is the authorized officer who

was required to carry out the directions as contained in the said order dated 22.01.2015. The Petitioner's Appeal and Revision were directed against the order passed under Section 79(2)(b) of the MCS Act and not the original order dated 22.01.2015. In so far as the jurisdiction of the Registrar is concerned, there cannot be any gain saying of the fact that the authorities under the MCS Act can interfere if the affairs of the society are being conducted in a manner so to say against the provisions of the Act, rules, or the bye laws. In the instant case since the demand was not covered by any bye law, what the Deputy Registrar has done is directing the Petitioner society to delete the amount of Rs.67,000/- and Rs.979/- from the monthly bills of the Respondent No.5. In my view, no exception could be taken to the order passed by the Deputy Registrar of Co-operative Societies as confirmed by the order passed by the Appellate Authority and thereafter in Revision. The judgment in ***Urban Improvement Trust, Jodhpur's*** case (*supra*), would not further the case of the Petitioner society in so far as the exercise of jurisdiction by the Deputy Registrar is concerned. In my view, therefore, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]