

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.437 OF 2017**

Ashok Gangaram Hule and ors. : Petitioners.
Versus
State of Maharashtra
Through its Secretary of
Department of Co-operation, Marketing
and Textile and ors. : Respondents.

Mr. S S Deokar for the Petitioners.
Mr. R J Mane, AGP, for the Respondent Nos.1 and 2.
Mr. Sanjay Jain a/w Ms. Mona Limdi i/by L J Law for the Respondent
No.3.

CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.
DATE : 09th October 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 02/06/2016 passed by the Respondent No.1 as also the sequitur to the said order being the order dated 07/06/2016 passed by the Respondent No.2.

2 The Petitioners herein are the members of the Respondent No.3 Society. The Petitioners can be said to be minority group which is opposing the re-development of the plot of land in question on which the building of the Respondent No.3 Society is situated.

3 In so far as the said process of re-development is concerned, the State Government in exercise of powers conferred by Section 79A of the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act") has

formulated certain guidelines in the matter of passing a resolution in the General Body Meeting held for selecting the Developer for carrying re-development of the Society's property and the requirements of such a resolution being passed by the requisite number of members of the Society present in such a meeting.

4 In so far as the instant Petition is concerned, the challenge is revolving around the requirement of 3/4th of the members of the Society passing resolution which is mandated by the order dated 03/01/2009.

5 There is no dispute about the fact that a Special General Body Meeting of the Respondent No.3 Society was convened on 01/06/2015 to select a Developer after one M/s. Atharva Enterprises was shortlisted. The said Special General Body Meeting was attended by all the 10 members of the Society out of which 6 voted in favour of the said M/s. Atharva Enterprises whereas 4 opposed the said M/s. Atharva Enterprises. In view of the requirement of such a resolution being required to be passed by 3/4th of the members present on voting it was required to be observed that no resolution was passed in the said Special General Body Meeting.

6 At this stage it is required to be noted that the building of the Respondent No.3 society is situated on a plot of land out of which only 333

sq.mtrs is available for development. Hence in that sense the said plot of land can be said to be very small for the purpose of undertaking re-development. It appears that the said M/s. Atharva Enterprises is developing the adjoining plot on which a chawl was situated and therefore the said M/s. Atharva Enterprises it seems evinced interest in developing the plot belonging to the Respondent No.3 Society so that a joint development could be carried out. It is required to be noted that after the Society was unsuccessful in passing the resolution in the said meeting as per the requirement of the said order dated 03/01/2009 issued by the State Government, the Respondent No.3 applied to the Assistant Registrar, Co-operative Societies, H East Ward for being granted exemption from the requirement of the resolution being passed by 3/4th majority. The application made by the Respondent No.3 – Society to the Assistant Registrar was forwarded by the Assistant Registrar to the State Government for relaxation. Suffice it would be to state that having regard to the facts as narrated above, the State Government vide its letter dated 02/06/2016 relaxed the condition in so far as the requirement of the resolution being passed by 3/4th majority is concerned.

7 Pursuant to the said relaxation the Assistant Registrar vide his letter dated 07/06/2016 granted approval to the appointment of the said M/s. Atharva Enterprises since out of total 10 members, 6 members voted in favour of the said M/s. Atharva Enterprises in the Special General Body Meeting

which was held on 01/06/2015. As indicated above, it is the said letter dated 02/06/2016 of the State Government as well as the consequential letter dated 07/06/2016 of the Assistant Registrar granting approval to the appointment of the said M/s. Atharva Enterprises which are taken exception to by way of the above Writ Petition.

8 The principal contention of the learned counsel for the Petitioners Shri Deokar was that the State Government could not have relaxed the condition providing for a resolution being passed by 3/4th members by taking recourse to Section 157 of the said Act. The learned counsel for the Petitioners would question the grant of relaxation by the State Government on the said basis. The learned counsel would further contend that even assuming that such a relaxation would be granted, the Respondent No.3 Society was still required to hold a Special General Body Meeting de-novo to pass a fresh resolution. It was the submission of the learned counsel for the Petitioners that the orders passed by the State Government cannot be observed in breach and in support of the said contention relied upon the judgment of the Apex Court reported in 2000(Supp.1) Bom. C.R. 864 in the matter of State of Maharashtra & others v/s. Karvanagar Sahakari Griha Rachana Sanstha Maryadit & others.

9 Per contra, the learned counsel appearing for the Respondent No.3

Shri Sanjay Jain would support the communications as referred to herein above. The learned counsel would contend that in the special facts of the present case, it was necessary that relaxation was granted from the operation of the said letter dated 03/01/2009 in so far as the requirement of the resolution being passed by 3/4th majority is concerned. The learned counsel for the Respondent No.3 sought to draw our attention to the peculiar facts of the present case wherein the plot admeasuring 333 sq.meters is available for development.

10 Having heard the learned counsel for the parties, we have considered the rival contentions. The question that arises for consideration is whether the State Government has the power to relax the condition as mentioned in its order dated 03/01/2009 issued under Section 79A of the said Act. A reading of Section 79A discloses that the State Government in the public interest or for the purpose of requiring proper implementation of co-operative production or to secure proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof can issue directions. Hence Section 79A of the said Act is the enabling provision under which the State Government has power to facilitate the implementation of the co-operative movement, and the interest of the Society. A reading of subsection (2) makes it clear that the State

Government may modify or cancel any directions issued under subsection (1) and in modifying or cancelling such directions may impose such conditions as it may deem fit. Hence the State Government has also power to modify or cancel such directions. Such cancellation or modification would be in respect of the order which the State Government has already issued and would not mean that the cancellation or modification has to be in its entirety.

11 In the instant case as indicated above, having regard to the peculiar facts of the present case where there are only 10 members and who are awaiting re-development of the plot of land in question, the State Government has deemed it appropriate to exercise power and modify its order dated 03/01/2009 in so far as the Respondent No.2 Society is concerned. The relaxation granted in our view would be in the interest of the members of the Society as on re-development they would stand to gain a bigger area than the area which is presently in their occupation. Having regard to the fact that it was the submission of the learned counsel for the Petitioners that assuming that the State Government had power to relax the condition, the Respondent No.3 was still required to de-novo hold a meeting. We had inquired from the learned counsel for the Petitioners whether the Petitioners give up their challenge to the letters as afore-stated and would want a de-novo meeting to be held, the learned counsel for the Petitioners on instructions declined the said suggestion. Hence the aforesaid fact indicates that the Petitioners for one

reason or the other are interested in opposing the re-development of the Society's property.

12 In our view, the State Government acted well within its power whilst relaxing the condition having regard to Section 79A of the said Act though a reference is made to Section 157 of the said Act in the letter of the State Government granting relaxation, the same has to be attributed as a reference to a wrong provision. The source of power if any to relax the condition has to be under Section 79A of the said Act itself, as the guidelines have been issued in exercise of powers under Section 79A of the said Act. In so far as the judgment of the Apex Court (supra) is concerned, the said judgment was rendered in the facts as prevailing in the said case, the Apex Court has held that whilst issuing a direction the paramount consideration is the interest of the Society. The said judgment does not aid the Petitioners in any manner and in fact supports the action of the State Government in relaxing the condition of requirement of a resolution being passed by 3/4th majority.

13 In that view of the matter, no case for interdiction in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]