

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 6701 OF 2013**

**Kamgar Swa Sadan Co-operative)
Housing Society Ltd.,)
having its address at Mahadev Palav Marg,))
Currey Road, Mumbai – 400 012,)
through its Chairman,)
Sanjay Rajaram Mohite)** **..... Petitioner**

VERSUS

**1. Divisional Joint Registrar,)
Co-operative Societies, Mumbai Division,))
Mumbai, having his office at Malhotra)
House, 6th Floor, Opp.G.P.O., Fort,)
Mumbai – 400 001)**

**2. District Deputy Registrar,)
Co-operative Societies, Mumbai)
having his office at Malhotra House,)
6th Floor, Opp.G.P.O., Fort,)
Mumbai – 400 001)**

**3. Deputy Registrar/Enquiry Officer,)
Co-operative Societies, D-Ward,)
Mumbai – 400 001, having its office at)
Malhotra House, 6th Floor, Opp.G.P.O.,)
Fort, Mumbai – 400 001)**

**4. Mr.Anil Sawant,)
residing at Room No.A/19, Kamgar Swa)
Sadan C.H.S.Ltd., Mahadeo Palav Marg,))
Currey Road, Mumbai – 400 012)**

**5. Mr.Rajendra Chavan,)
residing at Room No. D/9, Kamgar Swa)
Sadan C.H.S.Ltd., Mahadeo Palav Marg,)**

Currey Road, Mumbai – 400 012)

**6. Mr.Balkrishna Mayekar,)
residing at Room No. C/11, Kamgar Swa)
Sadan C.H.S.Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**7. Mr.Prakash Kadam,)
residing at Room No. B/49, Kamgar Swa)
Sadan C.H.S.Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**8. Mrs.Kalpna Sakpal,)
residing at Room No. B/19, Kamgar Swa)
Sadan C.H.S.Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**9. Mr.Suresh Bhatkar,)
residing at Room No. A/38, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**10. Mrs.Seema Shinde,)
residing at Room No. B/10, Kamgar Swa)
Sadan C.H.S.Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**11. Mr.Sagarmal Jain Punamia,)
having office at Shop No.A/14, Kamgar Swa)
Sadan C.H.S.Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**12. Mr.Laxmilal Jain,)
having office at Shop No.A/12, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**13. Mrs.Vaishali Vilas Dalvi,)
Legal heirs of Mr.Vilas R.Dalvi, (since deceased)
residing at Room No. B/43, Kamgar Swa)**

**Sadan C.H.S.Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**14. Mr.Nemichand Bhogilal Jain,)
Adult, Indian Inhabitant of Bombay)
residing at Shop No. A/16, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**15. Mr.Uday Dhonndu Khambal,)
Adult, Indian Inhabitant of Bombay)
residing at Room No. D/19, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**16. Mr.Bhajirao Kisan Mandhare,)
Adult, Indian Inhabitant of Bombay)
residing at Room No. B/68, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**17. Mr.Shashikant B. Phansekar,)
Adult, Indian Inhabitant of Bombay,)
residing at Room No. A/50, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**18. Mr.Kiran T. Gaonkar,)
Adult, Indian Inhabitant of Bombay)
residing at Room No. B/65, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

**19. Mr.Anant Atmaram Loke,)
Adult, Indian Inhabitant of Bombay,)
residing at Room No. D/25, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)**

20. Mr.Ragho Hari Dhatak,)
Adult, Indian Inhabitant of Bombay,)
residing at Room No. C/46, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)

21. Mr.Vijay V. Patade,)
Adult, Indian Inhabitant of Bombay,)
residing at Room No. B/67, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)

22. Mrs.Suchita S. Phansekar,)
Adult, Indian Inhabitant of Bombay,)
residing at Room No. B/3, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)

23. Mr.Baban Vithal Bhawe,)
Adult, Indian Inhabitant of Bombay,)
residing at Room No. C/58, Kamgar Swa)
Sadan CHS Ltd., Mahadeo Palav Marg,)
Currey Road, Mumbai – 400 012)

Mr.Prasad Dhakephalkar, Senior Advocate, a/w. Mr.Vishwajeet Sawant, Mr.Nilesh Modi, Mr.B.N.Jadhav, i/b. Rustomji & Ginwala for the Original Petitioner in Writ Petition No.6701 of 2013.

Mr.S.H.Kankal, A.G.P. for the State – Respondent nos. 1 to 3.

Mr.Sandeep V.Bane, a/w. Ms.Akshata Satam for the Respondent no.7.

Mr.S.G.Surana, a/w.M.S.Surana for the Respondent nos. 4 to 6, 8 to 11.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 15th JUNE, 2018

PRONOUNCED ON : 28th JUNE, 2018

JUDGMENT :

By this petition the petitioner has impugned the order dated 14th May, 2013 passed by the learned Divisional Joint Registrar in Revision Application No.245 of 2013 allowing the revision application filed by the respondent nos. 4 to 13 and set aside the three letters dated 11th April 2011, 21st December 2012 and 17th January 2013 issued by the Assistant Registrar, Co-operative Societies, F/S Ward, Mumbai.

2. By an order dated 22nd October,2013 passed by this court, this court directed that the writ petition be heard finally at the stage of admission. All the respondents are served. The writ petition is accordingly heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioner society is the owner of the plot of the land bearing Cadastral Survey No.2/71 of Parel and Sewree Division, totally admeasuring about 3593.1 sq.mtrs., four buildings comprises of 19 shops, 222 residential tenaments, 3 society rooms, 1 godown and 1 society's office. It is the case of the petitioner that the petitioner has 236 members out of which 219 members are active members and four tenants. The construction of the building was carried out 90 years ago and the condition of the building is dilapidated and has precarious condition according to the petitioner.

4. On 3rd January,2009, the State Government issued a Government resolution/circular under section 79A of the Maharashtra Co-operative Societies Act, 1960 (for short the said 'MCS Act') and framed various guidelines for the

redevelopment of the building of the co-operative society.

5. On 18th October, 2010, the petitioner appointed Project Management Consultant and floated a tender for the proposed demolition of the existing building and for redevelopment of the property of the petitioner. On 12th February, 2011, a Special Extra Ordinary General Body Meeting of the petitioner society was held. It is the case of the petitioner that 169 members out of 219 members were present in the said meeting. The members of the society unanimously agreed and accepted the offer of M/s. Ratnaraj Realty and appointed them as the developers. The respondent nos. 4 and 6 to 11 were also present in the said meeting. The respondent no. 7 had given consent for the redevelopment. The said meeting was also attended by the Assistant Registrar, Co-operative Societies.

6. On 11th April, 2011, the Assistant Registrar, Co-operative Societies issued a letter to the petitioner instructing the petitioner to proceed with the redevelopment of the project to the petitioner by M/s. Ratnaraj Realty and instructed the petitioner to proceed with execution of the development agreement with the developer.

7. In the meanwhile, the Municipal Corporation of Greater Mumbai issued a notice on 1st August, 2011 under section 354 of the Mumbai Municipal Corporation Act calling upon the members of the petitioner to vacate the building on the ground that the buildings were in a dangerous condition.

8. By a notification dated 31st October, 2011 issued by the Government of Maharashtra under section 37(2) of the Maharashtra Regional and Town Planning Act, 1966, Regulation 33(7) of the Development Control Regulations for Greater

Mumbai, 1991 was modified to extend the provisions of the Regulation 33(7) to non-cessed buildings. As a result of the said notification, the benefits available under its Appendix – IIIA became available to the petitioner in case, the development was made under the provisions of Regulation 33(9) of D.C. Regulations, if applicable. The petitioner also could avail of the benefits of the Regulation 33(24) of the D.C. Regulations. The petitioner also became entitled to the benefit of fungible FSI under circular dated 6th January, 2012 in the redevelopment project proposed by the petitioner.

9. On 17th June, 2012, the petitioner held Extra Ordinary General Meeting which was also attended by the Project Management Consultant and also the legal adviser of the petitioner. The said meeting was attended by 189 members out of 219 members, the then eligible members. Various issues including the issue about the applicability of the provisions of Regulation 33(7), 33(9) and 33(24) of the redevelopment project of the society were discussed in the said meeting. The entire proceedings of the meeting were video recorded. The respondent nos. 4 to 12 were also present in the said meeting. The drafts of the development agreement, power of attorney and individual agreements were presented in the said meeting. The members were requested to sign NOC letters as per the format prepared by MHADA.

10. By letter dated 18th June, 2012, the developers informed the petitioner that for the purpose of redevelopment of the property, a consortium of M/s.Ratnaraj Realty, Mr.Pramod Jathar and others had formed a partnership firm known as M/s.Ratnaraj Blessing Milestone who in turn appointed Godrej Project Development Pvt. Ltd. as managers to manage the construction of the buildings on the property of the petitioner.

11. On 2nd December, 2012, the petitioner convened another Special General Body Meeting. 165 eligible members were present in the said meeting constituting 75% of the active members of the society. The respondent nos. 4 to 11 also attended the said meeting. The son of the respondent no.13 as representative of late Mr.Vilas Dalvi also attended the said meeting. The proceedings of the said meeting had been video recorded. The Assistant Registrar of the Co-operative Societies was also present in the said meeting along with the representatives of the developers, the Project Management Consultant and the legal adviser of the petitioner. The draft of the redevelopment agreement and the power of attorney and individual agreements both in English as well as in Marathi were discussed at length. It was resolved that all the documents translated in Marathi and circulated to the members were approved subject to the suggestions and recommendations of the members to be incorporated later if required. In the said resolution, certain office bearers and the members of the society were authorized to execute the documents on behalf of the petitioner for redevelopment of the said property.

12. On 18th December, 2012, the managing committee of the petitioner arranged a meeting at the society's premises with the Project Management Consultant and the legal adviser. It is the case of the petitioner that the said meeting lasted for four hours.

13. By a letter dated 21st December,2012, the Assistant Registrar directed the petitioner to proceed further as per the order dated 3rd January,2009 in the matter of redevelopment of the property of the petitioner. It is the case of the petitioner that 78% members of the petitioner society had given their consent by executing NOC in favour of MHADA. 189 members of the petitioner had

individually and independently given their consent letters to the petitioner approving the appointment of the developers and granting their irrevocable consent for demolishing the existing buildings/tenaments/structures and for redevelopment of the said property by constructing new buildings thereon. Majority of the members also agreed to enter into, execute and register separate agreement with the society and the developers for providing permanent alternative premises.

14. The petitioner entered into a development agreement on 24th December, 2012 and power of attorney with M/s. Ratnaraj Blessing Milestone and Godrej Project Development Pvt. Ltd. The said development agreement and power of attorney was registered on 16th March, 2013.

15. On 17th January, 2013 the Assistant Registrar addressed another letter to the petitioner to proceed with the development of the buildings. It is the case of the petitioner that when the redevelopment process was smoothly going on, the petitioner received a notice dated 17th April, 2013 issued by the Divisional Joint Registrar purportedly exercising *suo-moto* powers under section 154 of the MCS Act. In the said notice, there was a reference to a complaint regarding redevelopment process made by the respondent nos. 4 to 12 and also reference to the office letter dated 15th April, 2013 of the District Deputy Registrar, Co-operative Societies and a report of enquiry officer and Deputy Registrar, Co-operative Societies, Mumbai. It is the case of the petitioner that the said complaint appears to have made by respondent nos. 4 to 12 after two years of the meeting in which the developers and the Project Management Consultant were appointed and after eight months of the second Extra Ordinary General Meeting was held and four months after the third Extra Ordinary General Meeting in which the resolution

was passed for executing and registering the development agreement and other documents with the developers. The petitioner was called upon to attend the said meeting on 25th April, 2013.

16. Pursuant to the said notice, the petitioner appeared before the Divisional Joint Registrar and requested him to furnish copies of the report and alleged complaint mentioned in the said notice and to give opportunity to the petitioner to file a reply to the said notice. The respondent no.1 however gave five days time to file reply. The petitioner filed its written arguments on 4th May, 2013 before the respondent no.1.

17. By an order dated 4th May, 2013, the Divisional Joint Registrar quashed and set aside the letters dated 11th April 2011, 21st December 2012 (wrongly mentioned as 27th December 2012) and 17th January 2013 issued by the Assistant Registrar, Co-operative Societies, F/S Ward, Mumbai and held that the said letters were contrary to the provisions of the Government directive dated 3rd January, 2009. The respondent no.1 however did not interfere with the resolution passed by the petitioner from time to time. This order passed by the respondent no.1 has been impugned by the petitioner in this writ petition filed under Article 227 of the Constitution of India.

18. Mr.Dhakephalkar, learned senior counsel for the petitioner invited my attention to some of the exhibits to the petition including the resolutions passed by the petitioner from time to time and the Government directive dated 3rd January, 2009 issued by the State Government under section 79(A) of the MCS Act, the impugned letters addressed by the Assistant Registrar and also the impugned order passed by the respondent no.1. It is submitted by the learned senior counsel

that the three letters which were issued by the Assistant Registrar which have been set aside by the Divisional Joint Registrar were not in the nature of any decisions or orders issued by the Assistant Registrar which could be set aside by the Divisional Joint Registrar by exercising powers under section 154 of the MCS Act. He submits that the impugned order thus is without jurisdiction and deserves to be set aside on this ground alone.

19. In his alternate submission, it is submitted that even otherwise the Divisional Joint Registrar could not have exercised any *suo-moto* powers under section 154 of the MCS Act in the facts and circumstances of this case. It is submitted by the learned senior counsel that the Government resolution dated 3rd January, 2009 issued under section 79(A) of the MCS Act was issued as the guidelines for the development of the buildings by a co-operative society and were not mandatory in nature. The said guidelines did not have any statutory force. He submits that the said guidelines in any event did not have any application to the redevelopment of the property undertaken by a society under the provisions of Regulation 33(7) of the Development Control Regulations.

20. It is submitted that in any event, the petitioner had complied with all the requirements for the purpose of redevelopment as per Regulation 33(7) of the DC Regulations. The stage of execution and registration of the development agreement was already over and thus under the said development agreement, the petitioner had a contractual obligation and privity of contract with the developers. The authority could not have given any such directions to the petitioner for implementation of the contractual obligation under the development agreement executed between the petitioner and the developers.

21. It is submitted that the Divisional Joint Registrar has erroneously held that the petitioner had not followed the procedure to appoint the Project Management Consultant. The Project Management Consultant was appointed in the Annual General Body Meeting which was attended by the majority of the members. He also disputed the findings recorded by the Divisional Joint Registrar that 75% members of the petitioner were not present in the General Body Meeting held on 12th April, 2011 and 2nd December, 2011. The learned Divisional Joint Registrar had erroneously assumed an incorrect number of 240 members contrary to the record of the society of *bonafide* members eligible to attend the Special General Body Meeting of the society. Out of 240 members, only 219 members were eligible to attend the Special General Body Meeting of the petitioner.

22. It is submitted that the Divisional Joint Registrar has not considered various issues raised by the petitioner by filing written arguments while passing the impugned order. The respondent no.1 himself had observed in the impugned order that the Government of Maharashtra had issued guidelines 79(A) of the Maharashtra Co-operative Societies Act, 1960 for redevelopment of the society. The authorized officer of the Assistant Registrar cannot prevent the petitioner and majority of its members for selecting the developer of their choice.

23. In support of his submission that the Government directives issued under section 79(A) of the MCS Act were recommendatory and directory and not mandatory, learned senior counsel placed reliance on the judgment of this court delivered on 8th March, 2010 in ***Writ Petition No.10285 of 2009*** in case of ***Harsha Co-op.Housing Society Ltd.& Ors. vs. Kishandas S. Rajpal & Ors.***, and judgment of this court delivered on 13th July, 2016 in case of ***M/s.Maya Developers vs. Neelam R.Thakkar & Ors. in Notice of Motion (L) No.834 of 2015 in Suit***

No.435 of 2015 and other connected matters.

24. It is submitted by the learned senior counsel that the Divisional Joint Registrar did not furnish copy of the complaint filed by the respondent nos. 4 to 12 or the letter and report of the Deputy Registrar or the enquiry officer when the hearing was fixed in his office on 25th April, 2013. The order is thus in violation of principles of natural justice. He submits that the complaint made by the respondent nos. 4 to 12 itself was not maintainable under any provisions of law. No notice of any such enquiry or complaint was given to the petitioner.

25. It is submitted by the learned senior counsel for the petitioner that none of the submissions advanced by the petitioner have been considered by the learned Divisional Joint Registrar in the impugned order.

26. Mr.Sandeep V. Bane, learned counsel for the respondent no.7 on the other hand submits that the Government resolution dated 3rd January,2009 issued by the State Government under section 79(A) of the MCS Act is binding on the petitioner society and the same was mandatory and was required to be followed while carrying out any redevelopment by the society. He submits that it is averred by the petitioner itself in the petition that the petitioner has followed the guidelines framed in the said Government resolution dated 3rd January,2009. He submits that the petitioner has not fulfilled and satisfied the terms and conditions setout in the said Government resolution dated 3rd January,2009.

27. It is submitted by the learned counsel that since the Assistant Registrar had vide three letters had directed the petitioner society to take various steps to execute the development agreement with the developers though the petitioner had

not complied with the said Government resolution dated 3rd January,2009, such directions were in the nature of the orders issued by the Assistant Registrar contrary to the said resolution dated 3rd January,2009 and thus the Divisional Joint Registrar was empowered to quash and set aside those three letters by exercising the powers under section 154 of the MCS Act.

28. Learned counsel tries to distinguish the judgment of this court in case of ***Harsha Co-op.Housing Society Ltd.& Ors.*** (supra) and in case of ***M/s.Maya Developers*** (supra) on the ground that the buildings in both those matters were dilapidated whereas in this case the buildings are not dilapidated but are occupied by the large number of members of the petitioner society.

29. It is submitted by the learned counsel for the respondent no.7 that the Supreme Court has passed an order of status quo against the petitioner. The proceedings filed by some of the members of the society are still pending against the petitioner regarding redevelopment of the property in question. It is submitted that since the developers appointed by the petitioner is illegally appointed, the Assistant Registrar could not have directed the petitioner to execute the development agreement with such developers contrary to the terms and conditions of the resolution dated 3rd January,2009 and thus those directions were rightly set aside by the Divisional Joint Registrar.

30. Mr. Surana, learned counsel for the Respondent nos. 4 to 6 and 8 to 11 submits that the three letters issued by the Assistant Registrar to the petitioner to take various steps to execute the development agreement in favour of the petitioner and to take further steps so as to commence the construction were contrary to the terms and conditions of the Government resolution dated 3rd January,2009 and thus

were in the nature of the orders/directions and thus section 154 of the MCS Act were attracted to the facts of this case. The impugned order passed by the learned Divisional Joint Registrar thus cannot be considered as without jurisdiction by this court. It is submitted by the learned counsel that the Government resolution dated 3rd January,2009 issued under section 79(A) of the MCS Act is mandatory and is binding on the petitioner society.

31. Mr.Kankal, learned A.G.P. for the respondent nos. 1 to 3 also reiterates that the letters addressed by the Assistant Registrar were in the nature of directions and section 154 of the MCS Act was attracted. He however submits that the said resolution dated 3rd January,2009 issued by the State Government under section 79 of the MCS Act was directory.

32. Learned counsel for the petitioner in rejoinder submits that no powers were vested in the Assistant Registrar to issue any such directions to the petitioner as were issued by those three letters. The authorized officer was only required to remain present in the Special General Body Meeting held by the petitioner from time to time at the time of taking a decision on the redevelopment of the property of the petitioner and the said officer was to ensure that the meeting was considered smoothly. He was neither required to approve the development nor was required to give any NOC to the petitioner to proceed with the redevelopment of the building either under the said guidelines dated 3rd January,2009 or under any provisions of the MCS Act.

REASONS AND CONCLUSIONS

33. A perusal of the record indicates that the Municipal Corporation of Greater Mumbai had issued notices under section 354 of the Mumbai Municipal

Corporation Act, 1888 to the petitioner for carrying out the repairs stating that the conditions of the building was dilapidated. Various resolutions were passed by the petitioner in various meetings attended by the majority of the members in which various decisions were taken from time to time regarding redevelopment of the buildings of the petitioner. Such meetings were also attended by the authorized officer. The Assistant Registrar had issued three letters to the petitioner. By letter dated 11th April, 2011, the Assistant Registrar had asked the petitioner to proceed with the redevelopment project through M/s.Ratnaraj Realty and instructed the petitioner to proceed with execution of the redevelopment agreement with the said developers. By letter dated 21st December,2012, the Assistant Registrar had directed the petitioner to proceed further as per the Government directives dated 3rd January, 2009 in the matter of redevelopment of the buildings of the petitioner. By letter dated 17th January,2013, the Assistant Registrar had issued similar directions to the petitioner.

34. Learned counsel appearing for the respondents could not point out any authority under the said Government resolution dated 3rd January,2009 or under any of the provisions of the MCS Act authorizing the Assistant Registrar to issue any NOC or instructions to take any steps for redevelopment of the buildings of the society. Learned A.G.P. did not dispute before this court that the said resolution dated 3rd January,2009 was directory and not mandatory.

35. Under section 79(A) of the MCS Act, the State Government is empowered to issue directions in the public interest for the purposes of seeking proper implementation of co-operative production and other development programme approved or undertaken by Government or to secure the proper management of the business of the society generally or for preventing the affairs of

the society being conducted in the manner detrimental to the interests of the members or of the depositors or the creditors thereof. This court in case of ***Harsha Co-op.Housing Society Ltd.& Ors.*** (supra) has considered the said Government Resolution dated 3rd January,2009 and has held that the government resolution is required to be followed by the society where the members are unable to come to any decision by resolution at their own. This court accordingly did not interfere with the impugned order which was the subject matter of the said writ petition.

36. This court in case of ***M/s.Maya Developers*** (supra) has held that it is impossible to accept that 2009 directive is mandatory. It is sufficient if the participation, notice and disclosure were ensured. Where majority decisions are consistent with material compliance with the provisions of the Directive, that is surely enough. In my view, the principles laid down in the aforesaid two judgments are applicable to the facts of this case. I am respectfully bound by the principles of law laid down by this court in those judgments.

37. A perusal of the order passed by the learned Divisional Joint Registrar indicates that the learned Divisional Joint Registrar has purportedly exercised powers under section 154 of the MCS Act. A perusal of the Government resolution dated 3rd January,2009 clearly indicates that even if the directions issued in the said resolution are not complied with by the society in the manner prescribed therein, no consequences is provided for such alleged non compliance on that ground also. In my view, such Government resolution cannot be considered as mandatory but has to be considered as directory.

38. A perusal of the impugned order passed by the learned Divisional Joint Registrar indicates that the respondent nos.2 and 4 to 11 had made complaint against the petitioner alleging various breaches in respect of the process of the redevelopment proposed by the petitioner. They had requested the learned Divisional Joint Registrar to invoke the provisions under section 79 of the MCS Act or such other powers under the MCS Act to stall the redevelopment process and to enquire in the entire process of redevelopment. The learned Divisional Joint Registrar however purportedly exercised powers under section 154 of the MCS Act. In my view since the Assistant Registrar himself has no power to issue any directions to the petitioner to execute the development agreement in favour of the developer or to take any further steps under any of the provisions of the MCS Act or even under the said Government resolution dated 3rd January,2009, the instructions issued to the petitioner were not in the nature of any directions or orders. Section 154 of the MCS Act therefore would not be attracted to the facts in this situation. The learned Divisional Joint Registrar could not have thus set aside those directions issued by the Assistant Registrar.

39. Be that as it may, the entire order passed by the learned Divisional Joint Registrar under section 154 of the MCS Act is on the premise that those three letters were alleged to be in the nature of directions issued to the petitioner contrary to the Government directives dated 3rd January,2009 and thus were declared as illegal, nonest and set aside. Since the said Government resolution itself is not mandatory but is directory, no consequences having been provided in the said Government resolution dated 3rd January,2009 for non compliance thereof, in my view the learned Divisional Joint Registrar could not have set aside those three letters addressed by the Assistant Registrar, Co-operative Societies. The learned Divisional Joint Registrar also could not have thus rendered any findings

against the petitioner that the petitioner had committed breach of those directives issued by the State Government under section 79(A) of the MCS Act.

40. A perusal of the record indicates that the learned Divisional Joint Registrar in the impugned order placed reliance on the report allegedly provided by the enquiry officer/Deputy Registrar which was submitted by the Deputy Registrar to the Deputy District Registrar who had requested the learned Divisional Joint Registrar to take *suo-moto* action on the said report. The learned Divisional Joint Registrar did not furnish any copy of the said so called report submitted by the District Registrar, enquiry officer/ Deputy Registrar before passing the impugned order. The impugned order thus passed by the learned Divisional Joint Registrar is also in gross violation of principles of natural justice. No reliance on such report could be placed by the learned Divisional Joint Registrar without furnishing a copy thereof to the petitioner's society and without giving an opportunity to deal with such report. The impugned order passed by the learned Divisional Joint Registrar thus deserves to be set aside on this ground also. In my view, the impugned order passed by the Deputy Registrar is without jurisdiction and even otherwise contrary to the provisions of the Maharashtra Co-operative Societies Act, 1960 and contrary to the principles of law laid down by this court in case of ***Harsha Co-op.Housing Society Ltd.& Ors.*** (supra) and in case of ***M/s.Maya Developers*** (supra) and thus warrant interference under Article 227 of the Constitution of India. Various findings rendered by the learned Divisional Joint Registrar are totally perverse and thus deserve to be set aside.

41. I, therefore, pass the following order :-

(a) The impugned order dated 14th May, 2013 passed by the learned Divisional Joint Registrar in

Revision Application No.245 of 2013 is quashed and set aside.

(b) Revision Application No.245 of 2013 is dismissed.

(c) Writ petition is disposed of in the aforesaid terms.
There shall be no order as to costs.

(R.D.DHANUKA, J.)