

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

**WRIT PETITION NO. 9232 OF 2017**

Lalitkumar Uttamdas Gajaria & Ors. .. Petitioners

v/s.

The State of Maharashtra and Ors. ..Respondents

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Mr. Vishwajeet Sawant a/w Mr. Atul Daga with Mr. Raunit Thakar with Mr. Hasmant Khan i/b M/s. Rustamji & Ginwala for the Petitioners.

Ms. Jyoti P. Jadhav, AGP for the Respondent Nos. 1 to 3.

Mr. V.S. Kapse a/w Mr. Akshay A. Sawant i/b Mr. C.K. Tripathi for the Respondent No. 9.

Ms. Sangeeta S. Salvi for the Respondent No. 13.  
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**CORAM : A.A. SAYED &  
V.L. ACHLIYA, JJ.**

**DATED : 29<sup>th</sup> June, 2018.**

**P.C. :**

1. This Petition filed under Section 226 and 227 of the Constitution of India challenges i) the order dated 21<sup>st</sup> May 2010 passed by the Deputy Registrar, Co-operative Societies, A-Ward, Mumbai, under Section 9 (1) of the Maharashtra Co-operative Societies Act (MCS' Act for short) allowing the Application for registration of the Esplanade Building Tenants Co-operative Society Limited (Respondent No.4-Society for short). ii) the order dated 8<sup>th</sup> October, 2015 passed by the Divisional Joint Registrar, Co-operative Society dismissing the Application of the Petitioners for de-registration

of the Respondent No. 4-Society under Section 21A of MCS Act, and  
 iii) the order dated 7<sup>th</sup> July 2016 passed by the Minister, Co-operation  
 Department in Revision Application filed by the Petitioners under  
 Section 154 of the Maharashtra Co-operative Societies Act.

2. The Petitioners claim to be co-owners of the property formerly known as “Esplanade School Building” (hereinafter referred to as the said building). The Petitioners claim that the Respondent No. 4-Society has been registered on the basis of the Application of some of the occupants of the said building who are Respondent Nos. 5 to 25 herein. The Application was allowed and the Respondent No.4-Society is registered as “General Society” and its sub classification is shown as “other Society” under Rule 10 (1) of the Maharashtra Co-operative Societies Rules ('MCS Rules' for short) which sets out the classification of Societies. The grievance of the Petitioners is essentially that the Respondent No.4-Society is registered on the basis of misrepresentation inasmuch as the Respondent Nos. 5 to 25 had not disclosed the ownership of the said building and the several eviction pending suits which are filed by the Petitioners against the occupants of the said building.

3. Sections 9(1) and 21A(1) of the MCS Act are relevant for our purposes. They read as under:

**“9. Registration.-** (1) If the Registrar is satisfied that a proposed society has complied with the provisions of this Act and the rules, or any other law for the time being in force, or

policy directives issued by the State Government under section 4 and that its proposed by-laws are not contrary to this Act or to the rules, he shall, within two months, from the date of receipt of the application register the society and its by-laws”.

**“21A. De-registration of societies.-** (1) If the Registrar is satisfied that any society is registered on mis-representation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, (or any primary agricultural co-operative credit society using the word 'Bank', 'Banking, 'Banker' or any other derivative of the word 'Bank' in its name,) he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society .....

4. Considering the aforequoted provisions, the de-registration of the Respondent No.4-Society in the present case can be sought by the Petitioners only on the ground that the Respondent No.4-Society is registered on 'misrepresentation' made by the Applicants-the Respondents Nos. 5 to 25 herein. Having heard the learned Counsel for the parties, we find that the impugned orders cannot be faulted. The authorities below have arrived at a finding of fact that there is no 'misrepresentation' by the Respondent Nos. 5 to 25. The Application for the registration of the Respondent No.4-Society is made by Respondent Nos. 5 to 25 who are occupants of the said building which is a heritage building constructed in the year 1867.

5. It appears that the said building was completely neglected by the owners and in a state of disrepair and the Municipal Corporation had also issued Notices under Section 354 of the Mumbai Municipal Corporation Act to pull down the said building and also initiated prosecution against the owners of the said building. According to the Respondent Nos. 5 to 25, the occupants of the said building were required to approach this Court by filing a Writ Petition and have expended about Rs. 2.5 crores towards repair of the said building. If at all there is any misuse by the occupants of the said building on the basis of registration of the Respondent No. 4-Society as alleged by the Petitioners, the remedy of the Petitioners lies elsewhere. De-registration of the Respondent No.4-Society would not be the remedy for the misuse, if any, by the occupants as alleged.

6. For the reasons mentioned above, we find that this is not a fit case to exercise the extra ordinary writ jurisdiction of this Court to interfere with the concurrent findings of facts of the Authorities below.

7. The Petition is dismissed. There shall no order as to costs. We clarify that we have not gone into the issue of ownership or title of the said building.

**(V.L. ACHLIYA, J.)**

**(A.A. SAYED, J.)**