

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION NO. 1765 OF 2016**

**Jay Anant Sagar Co-op. Housing Society,)
a Co-operative Society registered under)
the provisions of Maharashtra Co-operative)
Societies Act, 1960 having its address at)
Tembhi Pada Road, Bhandup (W),)
Mumbai – 400 078) Petitioner**

Versus

**1. The Divisional Joint Registrar,)
Cooperative Societies, Mumbai Division,)
Mumbai having his office at 6th Floor,)
Malhotra House, Opp. GPO, Fort,)
Bombay – 400 001)**

**2. Assistant Registrar,)
Co-op Societies, 'S' Ward, having his)
office at Room No.202, 2nd Floor,)
Kokan Bhavan, Navi Mumbai – 400 614)**

**3. Mr.Sunil Vishnu Sarang,)
residing at flat no.A/2, Ground Floor,)
Jay Anant Sagar Co-op.Housing Society Ltd.,)
Tembhi Pada Road, Bhandup (W),)
Mumbai – 400 078.)**

**4. The Tahsildar, Kurla,)
having his office at Topiwala College Building)
1st Floor, Sarojini Naidu Road,)
Mulund (W), Mumbai – 80.) Respondents**

Mr.N.N.Bhadrashete for the Petitioner.

Mr.Rajiv Mane, Assistant Government Pleader for the State –
Respondent nos. 1, 2 and 4.

Mr.Chandrakant P.Deogirigkar for the Respondent no.3.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 5th JULY, 2019
PRONOUNCED ON : 30th JULY, 2019

JUDGMENT :

By this petition filed under Article 226 of the Constitution of India,the petitioner has impugned the order dated 30th March,2016 passed by the Divisional Joint Registrar, Co-operative Societies, thereby dismissing the revision application filed by the petitioner and allowing the application filed by the respondent no.3 under section 23(2) of the Maharashtra Co-operative Societies Act, 1960 respectively (for short the said MCS Act). Some of the relevant facts for the purpose of deciding this petition are as under :-

2. Mr.Vishnu Tukaram Sarang, the father of the respondent no.3 is a member of the petitioner society and had been allotted flat no.A/2 on the Ground Floor of the building of the petitioner society. It is the case of the petitioner that the respondent no.3 made an application dated 16th February,2015 with the office of the learned Assistant Registrar, Co-operative Societies under section 23(2) of the MCS Act praying for deemed membership in respect of the said flat no.A/2 situated on the ground floor of the building of the petitioner society. In the said application under section 23(2), the respondent no.3 contended that he was granted 'no objection' by the petitioner by a letter dated 15th February,1999 and admitting him as its member in respect of the said

flat. It was contended that the respondent no.3 had agreed to purchase the said flat from his father Mr.Vishnu Tukaram Sarang.

3. The respondent no.3 had allegedly lost/misplaced some of the documents in the flood of 26th July, 2005. In the managing committee meeting dated 27th July, 2011, the respondent no.3 was admitted as an associate member in respect of the said flat along with his father Mr.Vishnu Tukaram Sarang. It was further contended in the said application by the respondent no.3 that without sufficient/reasonable cause, the petitioner failed to delete the name of his father from the share certificate and refused to grant membership of the petitioner society in respect of the said flat A/2. The petitioner filed its reply to the said application before the respondent no.2.

4. It was the case of the petitioner that the respondent no.3 had not made any application for seeking membership of the petitioner society and thus there was no question of any deemed membership of the respondent no.3 in the petitioner society in respect of the said flat no.A/2. By an order dated 28th July, 2015, the respondent no.2 declared the respondent no.3 as a deemed member of the petitioner and directed the petitioner to record the name of the respondent no.3 in the records maintained by the petitioner including the share certificate. The petitioner impugned the said order dated 28th July, 2015 by filing a revision application bearing no.287 of 2015 before the Divisional Joint Registrar under section 154 of the MCS Act. By an order dated 30th March,2016, the learned Divisional Joint Registrar dismissed the said revision application bearing no.287 of 2015 filed by the petitioner. The

petitioner has impugned the order dated 28th July, 2015 passed by the respondent no.2 and order dated 30th March,2016 passed by the respondent no.2 in this petition.

5. Mr.N.N.Bhadrashete, learned counsel appearing for the petitioner submits that the father of the respondent no.3 was all throughout member of the petitioner society in respect of the said flat A/2. The respondent no.3 did not make any application for membership at any point of time in respect of the said flat to the petitioner. A question of the petitioner thus refusing to admit the respondent no.3 as a member in respect of the said flat did not arise and consequently there was no question of the respondent no.2 granting deemed membership in favour of the respondent no.3 in respect of the said flat in the petitioner society. He submits that the respondent no.3 did not produce any document or proof of submitting the application for membership along with other document to the petitioner society as provided under bye-law of the petitioner before the authority below in support of his submission that though he had applied for the membership in respect of the said flat to the petitioner, the petitioner had refused to admit him as a member of the society or had not responded to the said application within the prescribed period under section 22 of the MCS Act.

6. It is submitted by the learned counsel that even in the application under section 23(2) of the MCS Act filed by the respondent no.3 or even in the written submissions, no details of the application alleged to have been made by the respondent no.3 for membership along with the

documents alleged to have been delivered to the petitioner were furnished. The petitioner had specifically denied the factum of receipt of any such alleged application for membership from the respondent no.3. The onus was on the respondent no.3 to prove that he had filed an application for membership along with requisite documents prescribed under the bye-law to the petitioner society on a particular date and the membership was either denied by the petitioner or there was no response from the petitioner to the said application within the time prescribed. The respondent no.3 had failed to discharge such onus before the respondent no.2. He submits that the finding recorded by the respondent no.2 that the relevant papers along with an application for membership had been submitted to the petitioner is *ex-facie* perverse.

7. Learned counsel for the petitioner invited my attention to the certificate dated 15th February, 1999 allegedly signed by then secretary of the petitioner society certifying that the petitioner had accepted the respondent no.3 as a member in respect of the said flat (annexed at page 143). He also invited my attention to another certificate allegedly signed by the same secretary on the same date stating that the petitioner has no objection in admitting the respondent no.3 as a member of the petitioner society for acquiring the flat no.A/2 in the building of the society subject to finalization of some transaction between the respondent no.3 and his father. In the said alleged certificate, the petitioner purported to give no objection in favour of the respondent no.3 in raising loan from LIC by mortgaging the said flat.

8. Learned counsel also invited my attention to the alleged certificate dated 19th February, 1999 allegedly signed by the then secretary of the petitioner in favour of the respondent no.3 purporting to certify that the father of the respondent no.3 is a founder member of the petitioner society and has been allotted flat no.A/2 in the petitioner society. He also invited my attention to the appeal filed by the respondent no.3 before the respondent no.2 under section 23(2) alleging that the father of the respondent no.3 by the registered agreement for sale dated 17th February, 1999 had transferred the said flat in favour of the respondent no.3. He submits that in paragraph (3) of the said application, it was alleged by the respondent no.3 that the petitioner society had issued a certificate under the seal and signature of the petitioner and the office bearer dated 15th February, 1999 after the registration of the agreement for sale. He submits that the said alleged agreement for sale was not registered till 2014. In support of this submission, learned counsel invited my attention to the copy of the agreement for sale dated 17th February, 1999 annexed at serial no.1 of the compilation of the documents filed by the petitioner. He submits that the said document was registered only on 27th November, 2014 and not on 15th February, 1999 as falsely alleged by the respondent no.3.

9. Learned counsel for the petitioner submits that no such alleged certificate dated 15th February, 1999 annexed at pages 141 and 142 of the affidavit in reply filed by the respondent no.3 and the alleged allotment letter dated 19th February, 1999 are found in the records of the petitioner society and are *ex-facie* fabricated.

10. It is submitted by the learned counsel for the petitioner that on the application made by the respondent no.3, the respondent no.2 purportedly exercised its jurisdiction under section 79(2) to record the name of the respondent no.3 in the records of the petitioner and for executing the said order passed by him by making a reference to the respondent no.4 i.e. the Tahsildar Kurla to take the possession of the records of the petitioner on the ground that the petitioner had avoided to record the name of the respondent no.3. He submits that the respondent no.2 did not have such jurisdiction to invoke its purported power under section 79(2) of the MCS Act for implementing its order dated 28th July, 2015. He submits that the petitioner society had already filed this writ petition on 18th July, 2016 and had served a copy of the writ petition on the office of the learned Government Pleader on 19th July, 2016.

11. The representative of the respondent no.2 however with the help of the Police Sub Inspector, Bhandup Police Station took possession of the original records of the society on 20th July, 2016 viz. IMJ form register and under his purported jurisdiction recorded the name of the respondent no.3 in share certificate and in IMJ form register. During the pendency of this writ petition, the petitioner applied for amendment of the petition and to bring these subsequent events on record and prayed for quashing and setting aside the action of the respondent no.2 recording the name of the respondent no.3 as a member on the share certificate and IMJ form register of the petitioner society.

12. It is submitted by the learned counsel that the learned Divisional

Joint Registrar also passed an order rejecting the revision application filed by the petitioner and rendered perverse findings without considering the submissions made by the petitioner which are totally contrary to the provisions of law and evidence.

13. It is submitted by the learned counsel for the petitioner that the said agreement for sale annexed at serial no.1 of the compilation of documents itself would clearly indicate that the deficit stamp duty was paid by the respondent no.3 only on 4th December, 2014 and only thereafter the document was registered. He submits that even otherwise without payment of stamp duty or registration, the petitioner could not have granted the respondent no.3 any membership even if he would have applied in the year 1999 as falsely alleged by the respondent no.3.

14. Learned counsel for the petitioner submitted that the respondent no.3 himself had applied for associate membership in the month of July 2011 on which application, the father of the respondent no.3 had made recommendation to include the name of the respondent no.3 as an associate member in respect of the said flat. The petitioner in its meeting held on 26th July, 2011 had accordingly included the name of the respondent no.3 as an associate member in the records of the petitioner alongwith the membership of his father in respect of the said flat. He submits that if according to the respondent no.3, he had already applied for membership as far back as in the year 1999, the respondent no.3 would not have applied for associate membership in the year 2011 in respect of the said flat. He submits that even till

today, the petitioner has been issuing the maintenance bills in respect of the said flat in the name of the father of the respondent no.3 since he continues to be a member of the petitioner in respect of the said flat no. A/2.

15. It is submitted by the learned counsel for the petitioner that in the year 2014, the petitioner had put up the provisional list of voters as on 31st October,2013 of the petitioner society. The name of the father of the respondent no.3 was shown in the list of members in respect of the said flat bearing no.A/2. The respondent no.3 thereafter filed a dispute under section 91 of the Maharashtra Co-operative Societies Act before the Co-operative Court. The co-operative court had refused to grant any interim relief in favour of the respondent no.3. The respondent no.3 thereafter applied for duplicate share certificate in respect of the said flat though he was fully aware that he was not even a member of the petitioner society in respect of the said flat bearing no.A/2.

16. Learned counsel submits that the Maharashtra State Co-operative Appellate Court dismissed the appeal filed by the respondent no.3 in Appeal from Order No. 06 of 2015 arising out of the order dated 9th January,2015 passed by the Co-operative Court rejecting the application for the interim relief filed by the respondent no.3. He submits that the co-operative court as well as the co-operative Appellate Court have rendered various findings against the respondent no.3 in those proceedings in respect of his claim for the membership in respect of the petitioner society.

17. Mr. Deogirigkar, learned counsel for the respondent no.3 on the other hand submits that the respondent no.3 had already purchased the said flat from his father by executing an agreement for sale dated 17th February, 1999 which was duly registered. He strongly placed reliance on section 25 of the MCS Act in support of his submission that since the father of the respondent no.3 had already sold his right, title and interest in the said flat in favour of the respondent no.3, he ceased to be a member of the petitioner society in respect of the said flat from the date of entering into the said agreement for sale and thus the petitioner society could not have continued the name of the father of the respondent no.3 as a member in respect of the said flat.

18. The next submission of the learned counsel for the respondent no.3 is that under section 22 of the MCS Act, the respondent no.3 was not even required to make any application for membership separately in view of his client having purchased the said flat from his father under an agreement for sale which was duly registered and stamped. He strongly placed reliance on three certificates purportedly issued by the then secretary of the petitioner on 15th February, 1999 and 19th February, 1999 certifying that the petitioner society had accepted the respondent no.3 as a member of the petitioner society. He submits that in the flood of 25th July, 2005, all the records of his client relating to the membership of the society were destroyed and thus the same could not be produced before the respondent no.2.

19. It is submitted by the learned counsel for the respondent no.3

that the impugned orders passed by the respondent nos.2 and 3 are already implemented in view of the direction issued by the learned Tahsildar under section 79(2) of the MCS Act on 7th January, 2016. The name of the respondent no.3 has been already entered into the share certificate of the petitioner society in respect of the suit flat. The name of the respondent no.3 is also recorded in IMJ Form Register of Members. The writ petition is not maintainable on that ground itself.

20. It is submitted by the learned counsel for the respondent no.3 that the membership of the respondent no.3 was already accepted by the petitioner as far back as on 15th February, 1999. The question of the petitioner making the respondent no.3 as an associate member along with his father in the year 2011 did not arise. He submits that his client is disputing the minutes of the meeting of the petitioner society held on 27th July, 2011 purporting to accept the respondent no.3 as an associate member in respect of the flat no.A/02 – Vishnu Sarang.

21. It is submitted by the learned counsel that Deputy Registrar had opined that the respondent no.3 shall make an application under section 22(2) of the MCS Act to the society for membership and if the society refuses to make the respondent no.3 a member, then the respondent no.3 can file an appeal under section 23(2) of the MCS Act. The respondent no.3 had accordingly filed an application to the petitioner for membership. The petitioner however, did not accept the application and has also not accepted the respondent no.3 as its member.

22. Learned counsel for the respondent no.3 placed reliance on the judgment of this Court in case of New India Co-operative Housing Society vs. Deputy Registrar, Co-operative Housing Society & Ors. in Writ Petition No.2022 of 2015 delivered on 26th April, 2019 in support of the submission that since there was no stay obtained by the petitioner against the order passed by the respondent nos.2 and 3, learned Tahsildar was justified in passing an order under section 79(2) of the MCS Act directing the petitioner society to comply with the orders passed by the respondent nos.2 and 3 and to record the name of the respondent no.3 in the share certificate as well as in the Register of Members.

23. Mr.Bhadrashete, learned counsel for the petitioner in rejoinder submits that three certificates relied upon by the respondent no.3 allegedly issued by the then Secretary of the petitioner were fraudulent and were not found in the records of the petitioner society. He submits that even otherwise on the date of issuance of such alleged certificates, the respondent no.3 had not even purchased the said flat from his father and in any event had not paid the requisite stamp duty thereon. The said agreement for sale was admittedly registered in the year 2014. The respondent no.3 could not produce any proof of submission of an application for membership either in the the year 1999 or even in 2014. The question of any alleged refusal on the part of the petitioner to admit the respondent no.3 as a member in respect of the said flat did not arise. The respondent no.2 thus could not pass any order granting deemed membership in respect of the suit flat in favour of the respondent no.3.

24. Learned counsel distinguished the judgment of this Court in case of *New India Co-operative Housing Society* (supra) relied upon by the learned counsel for the respondent no.3 on the ground that the facts before this court in the said judgment were totally different. Without prejudice to the rights and contentions of the petitioner, it is submitted that even if the respondent no.3 applies today for membership in respect of the said flat to the petitioner in accordance with the provisions of the MCS Act and the bye-laws of the petitioner society and complies with all the requirements mentioned therein, the petitioner may consider such application for membership in accordance with law. It is submitted that the respondent no.3 has filed various frivolous complaints against the petitioner and its office bearers in the office of the Registrar of Co-operative Societies. Learned counsel invited my attention to various findings recorded by the Co-operative Court-3, Mumbai and the Maharashtra State Co-operative Appellate Court at Mumbai in the proceedings filed by the respondent no.3 thereby refusing to grant any relief in favour of the respondent no.3 in respect of the said flat in question.

25. It is submitted by the learned counsel that since both the orders passed by the authorities below are totally without jurisdiction and without application of mind and the findings rendered in those two orders being perverse, this Court has ample power to interfere with those orders under Article 226 of the Constitution of India.

REASONS AND CONCLUSION :

26. This Court repeatedly called upon the learned counsel for the respondent no.3 to produce a proof of making an application for membership to the petitioner either in the year 1999 or 2014 along with requisite documents contemplated under the provisions of the MCS Act and the bye-laws of the petitioner society prior to filing an appeal under section 23(2) of the MCS Act before the respondent no.3 in Court. Learned counsel for the respondent no.3 however, could not produce a single document in support of his submission that such application for membership in accordance with the provisions of the MCS Act and the bye-laws of the petitioner society was made by the respondent no.3 at any point of time and could not produce any proof of acknowledgement thereof.

27. I shall now consider whether the record produced by the parties before the authorities below and before this Court would at all demonstrate that the respondent no.3 had made an application for the membership in accordance with the procedure prescribed under the provisions of the MCS Act and Rules or not or at all.

28. A perusal of the appeal filed by the respondent no.3 under section 23(2) of the MCS Act indicates that it was the case of the respondent no.3 that he was the owner of flat No.A/2 in the petitioner society. The said application was filed claiming deemed membership of the respondent no.3 as contemplated under section 22(2) of the MCS Act, 1960. In paragraph 2 of the said appeal, it was alleged that the father of the respondent no.3 had transferred the ownership rights and membership in respect of the said flat in the name of the

respondent no.3 by executing a registered agreement to sell dated 17th February, 1999. It was further alleged that thereafter the respondent no.3 had duly submitted the requisite application for the membership to the petitioner along with requisite copy of the said agreement to sell.

29. In paragraph 3 of the said appeal, it was alleged by the respondent no.3 that by following due process of law, the respondent no.3 had filled the application for transfer of the membership in his name to the petitioner. The petitioner transferred the membership in his name and accepted the respondent no.3 as the original member of the petitioner. The petitioner also allegedly issued a certificate under the seal and signature of the petitioner and its office bearers dated 15th February, 1999. after registration of the agreement of sale. The respondent no.3 placed reliance on the certificate allegedly issued by the petitioner dated 15th February, 1999.

30. In paragraph 9 of the said appeal, the respondent no.3 alleged that Shri Satya Shodak Koyade as a Secretary of the petitioner recorded in the Managing Committee meeting dated 27th July, 2011 and accepted the respondent no.3 as an Associate Member in respect of the said flat along with his father – Mr.Vishnu Sarang. The respondent no.3 placed reliance on the minutes of the petitioner society in respect of the said Managing Committee dated 27th July, 2011. In paragraph 12 of the said appeal, the respondent no.3 alleged that the Assistant Registrar “S” ward, Mumbai issued a letter to the petitioner on 9th September, 2013 asking the petitioner to provide the list of members as per “I” and ”J” Registers of the petitioner. The

petitioner by its letter dated 13th October, 2014 provided the list of the members of the petitioner society to the Assistant Registrar. The name of the respondent no.3 was listed as an Associate Member in the said list.

31. In paragraph 14 of the said appeal, it was contended by the respondent no.3 that he had applied to the Assistant Registrar “S” ward, Mumbai to direct the Secretary of the petitioner to include the name of the respondent no.3 in the list of member as the original member and not Associate Member. The petitioner however, published the list of voters by deleting the name of the respondent no.3 from the list of voters. In paragraph 18 of the said appeal, it was the case of the respondent no.3 that the Deputy Registrar “S” ward issued a letter dated 11th December, 2014 to the respondent no.3 suggesting that the respondent no.3 shall make an application to the petitioner society for membership and if the application for the membership is refused, the respondent no.3 shall make an application under sections 22(2) and 23(2) of the MCS Act for the relief.

32. In paragraph 19 of the said appeal, it was contended by the respondent no.3 that since no communication was received by the respondent no.3 from the petitioner, he was a deemed member of the petitioner society as contemplated under section 22(2) of the MCS Act, 1960. In the said appeal, the respondent no.3 prayed for a declaration that he became a deemed member of the petitioner society and also prayed for a direction against the petitioner to effect necessary changes and mutation entries in their record and more particularly in “I” and

“J” Registers, share certificate, Share Register thereby evidencing the membership of the respondent no.3.

33. A perusal of the appeal filed by the respondent no.3 clearly indicates that on one hand the respondent no.3 relied upon a copy of the registered agreement for sale dated 17th February, 1999 and on the other hand relied upon a certificate allegedly issued on 15th February, 1999 purportedly after registration of the agreement of sale certifying that the respondent no.3 was accepted as a member of the petitioner society. It is clear that on 15th February, 1999, the respondent no.3 had not even purchased the said flat from his father. A perusal of the first alleged certificate dated 15th February, 1999 which is strongly disputed by the petitioner indicates that the petitioner society had alleged to have accepted the respondent no.3 as a member in respect of the said flat. The second alleged certificate dated 15th February, 1999 signed by the same person purported to be the Secretary of the petitioner indicates that the petitioner had allegedly issued no objection in admitting the respondent no.3 as a member of the petitioner for acquiring flat No.A/2 in the building of the petitioner from his father Mr.Vishnu Tukaram Sarang subject to finalization of sale transaction by them.

34. The said alleged certificate further indicates that the petitioner had allegedly no objection in the respondent no.3 raising loan from L.I.C. on mortgage of the said flat. The third document relied upon by the respondent no.3 is an alleged certificate dated 19th February, 1999 signed by the same person certifying that the father of the respondent

no.3 is a founder member of the petitioner society and has been allotted the said flat in the society. The share certificate produced on record by the respondent no.3 does not indicate that the same was transferred by the petitioner in favour of the respondent no.3 in the year 1999 or that the respondent no.3 was made a member of the petitioner society in respect of the said flat. On the contrary, the respondent no.3 himself has admitted that in the Managing Committee meeting of the petitioner dated 26th July, 2011, the respondent no.3 was accepted as an Associate Member in respect of the said flat along with his father. I am thus not inclined to accept the submission of the learned counsel for the respondent no.3 that he was not aware of the said minutes of the Managing Committee meeting dated 26th July, 2011 or that the same were disputed by the respondent no.3.

35. A perusal of the said minutes of the meeting produced on record by the petitioner clearly indicates that the father of the respondent no.3 who is a member of the petitioner society gave his no objection in making the respondent no.3 as an Associate Member of the petitioner society. Since then the name of the respondent no.3 continued to be as an Associate Member along with his father till the share certificate and the Register of Members was forcibly corrected pursuant to the directions issued by the Tahsildar by exercising his powers purportedly under section 79(2) of the MCS Act.

36. It was not the case of the respondent no.3 that he had submitted an application for membership in the mode and manner prescribed under the provisions of the MCS Act read with MCS Rules and bye-

laws of the petitioner society in the year 1999 or 2014. The respondent no.3 even did not produce any copy of the application duly acknowledged by the petitioner before the Assistant Registrar when he made a complaint against the petitioner for not inserting his name in the voter's list of the petitioner society in the year 2014. Along with the said appeal filed in the month of February, 2015 also, he did not annexe any copy of the application alleged to have been filed for membership along with any acknowledgement thereof.

37. The respondent no.3 had filed a dispute in the Co-operative Court for a declaration that he was the owner of the said flat and had also acted as a Managing Committee member of the petitioner from August, 2011 till date. The respondent no.3 had applied for interim relief in the said Dispute bearing No.590 of 2014 before the Co-operative Court. By a detailed order dated 9th January, 2015, the Co-operative Court recorded various *prima-facie* findings against the respondent no.3 and has rejected the said application for interim relief. The Maharashtra State Co-operative Appellate Court rendered a judgment on 5th February, 2015 and dismissed the appeal preferred by the respondent no.3 against the order dated 9th January, 2015 passed by the Co-operative Court – 3, Mumbai. In both the orders, it was *prima-facie* observed that the respondent no.3 had failed to demonstrate that he was the original member of the petitioner and not an Associate Member.

38. A perusal of the impugned order passed by the Assistant Registrar, Co-operative Societies on 28th July, 2015 indicates that the

learned Assistant Registrar observed that it appeared that as per the provisions of the approved bye-laws, the respondent no.3 had filed an application for membership annexed with the alleged documents with the society. Despite such application made by the respondent no.3, the petitioner had not taken any action within a period of 90 days and therefore, the respondent no.3 had become deemed member of the petitioner. It is further observed that the documents submitted by the respondent no.3 appeared to be reasonable for transfer of flat.

39. Learned Assistant Registrar also strongly placed reliance on the letter dated 9th February, 1999 regarding the membership allegedly issued by the petitioner and held that the said letter appeared to be proper. As already pointed out, the authenticity of those three letters was strongly disputed by the petitioner society. The agreement entered into between the father of the respondent no.3 and the respondent no.3 itself was dated 17th February, 1999, thus the petitioner could not have admitted the respondent no.3 as a member on 15th February, 1999 or even on 19th February, 1999. The said agreement for sale dated 17th February, 1999 itself was registered only on 17th November, 2014. The respondent no.3 therefore, could not have filed a registered agreement for sale along with the alleged application form submitted to the petitioner in the year 1999. The entire order passed by the learned Assistant Registrar is based on presumption and without any evidence produced by the respondent no.3 on record including the application for membership along with other documents required to be filed for seeking membership in accordance with the provisions of the MCS Act, MCS Rules and the bye-laws.

40. A perusal of the order passed by the Divisional Joint Registrar indicates that the Divisional Joint Registrar in the impugned order dated 30th March, 2016 has simpliciter drawn a presumption that the respondent no.3 had applied for membership to the petitioner and the petitioner failed to communicate their decision within the stipulated period. The order passed by the learned Assistant Registrar, Co-operative Societies as well as by the Divisional Joint Registrar show total perversity and without application of mind. Both the orders are based on no evidence on record. The documents submitted by the petitioner and the submissions advanced before both the authorities have been totally overlooked by two authorities below.

41. Section 22 of the MCS Act provides as to who may become member of a society. Section 22(2) clearly provides that where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

42. Section 23(1) provides that no society shall, without sufficient

cause, refuse admission to membership to any person duly qualified therefor under the provisions of the MCS Act and its by-laws.

Section 23, 23(1), (1A), (2) and (3) of the MCS Act, 1960 read as under :-

“Section 23 . Open membership :

(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this At and its by-laws.

(1A) Where a society refuse to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of

being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar. [Every such appeal, as far, as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.”

43. Section 24 provides for nominal and associate member. Rule 19 of the Maharashtra Co-operative Societies Rules, 1961 (for short” MCS Rules”) provides for conditions to be complied with for admission of membership. Rules 19 and 19(A) of the MCS Rules, 1961 read thus :-

“19. Conditions to be complied with for admission for membership, etc:-

No person shall be admitted as a member of a society unless,—

(i) he has applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership;

(ii) his application is approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass and in the case of nominal or associate member, by an officer of the society authorized in that behalf by the committee;

(iii) he has fulfilled all other conditions laid down in the Act, the rules and the by-laws;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trusts or a local authority, the application for membership is accompanied by a resolution authorizing it to apply for such membership.

19A. Procedure for tendering application to the Registrar for membership under section 23(1 A):-

(1) Where a society has refused to accept the

application for membership from eligible person, such person shall tender an application to the Registrar in Form “H-1” together with requisite share money and entrance fee.

2) The Registrar, on receipt of such application , shall forward the same to the society concerned together with requisite share money entrance fee within thirty days from the date of its receipts.

(3) The society shall take the decision and communicate the same to the applicant within sixty days from the date of receipt of such application as provided in sub-rule (2) and if no decision is communicated to applicant within the said period of sixty days, the applicant shall be deemed to have been admitted as a member of such society.

(4) In case the society refuses to admit the applicant as its member shall communicate the decision within the period of sixty days mentioned in sub-rule (3) with reasons therefor and refund the share money entrance fee with such communication. If the society fails to refund the said amount, it shall be liable to pay interest at 15% per annum on the said amount from the date of such communication and the said amount if not paid, shall be recovered as arrears of land revenue.”

44. A conjoint reading of sections 22 and 23 with Rule 19 clearly provides that any person seeking to be admitted as a member of the society has to apply in the form laid down or in the form specified by the Register, if any, for membership. Rule 19 further provides that such person cannot be admitted as a member unless he has fulfilled all other conditions laid down in MCS Act, Rules and the Bye-laws. The said application has to be approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass and in the case of member, by an officer of the society authorized in that behalf by the committee.

45. The onus was on the respondent no.3 to prove that he had applied in writing in the form laid down by the petitioner or the form specified by the Registrar, if any, for seeking membership of the petitioner under Rule 19 of the MCS Rules read with section 22 of the MCS Act. The respondent no.3 failed to produce any proof of filing such application form for membership as provided under Rule 19 MCS Rules. The respondent no.3 at the same time does not dispute that his father continued to be the member of the petitioner society, till the name of his father was deleted from the record of the society. pursuant to the directions issued by the Tahsildar for forcibly correcting the records of the petitioner society by a person authorized by him so as to implement the order passed by the Assistant Registrar.

46. Though the respondent no.3 failed to produce any such proof of submitting an application, none of the authorities below could have proceeded on the premise that such application was filed along with other requisite details and the membership was refused by the petitioner society. Both the orders below in my view, are contrary to Rule 19 of the MCS Rules read with section 22 of the MCS Act and based on no evidence.

47. In my view, the deemed membership can be claimed only if an application for membership was filed as contemplated under Rule 19 of the MCS Rules read with bye-laws of the petitioner society and if the petitioner would not have communicated any decision to the respondent no.3 within three months from the date of receipt of such application. Since the respondent no.3 failed to produced any proof of making an application to the petitioner society Rule 19 of the MCS Rules, question of any failure on the part of the petitioner to communicate its decision on such application within a period of three months from the date of receipt of such application did not arise. Since there was no failure on the part of the petitioner in communicating its decision in absence of any such application for membership received from the respondent no.3, section 22(2) of the MCS Act which provides for deemed membership did not attract to the facts of this case at all. In my view, the submission of the responded no.3 that under section 22 of the MCS Act he was not required to file such application to the society for membership. is *ex-facie* contrary to the provisions of section 22 of the MCS Act read with Rule 19 of the MCS Rules and thus deserves to be rejected.

48. In my view, since section 22(2) of the MCS Act was not attracted in view of the respondent no.3 having failed to prove submission of any application for membership by the respondent no.3, learned Assistant Registrar could not have granted an order of deemed membership in favour of the respondent no.3. The Divisional Joint Registrar thus ought to have interfered with the order passed by the learned Assistant Registrar which jurisdiction he failed to exercise.

49. A perusal of the record clearly indicates that it is an admitted position that the name of the father of the respondent no.3 continued to be on record as a member. The name of the respondent no.3 continued to be on record as an Associate Member recorded by consent of the father of the respondent no.3 till the records were changed in view of the perverse order passed by the Assistant Registrar and confirmed by the Divisional Joint Registrar and forcibly executed in view of the directions issued by the learned Tahsildar. If according to the respondent no.3 the records of the respondent no.3 were destroyed due to flood situation on 26th July, 2005, the respondent no.3 having continued to receive the society maintenance bills even thereafter in the name of his father would not have accepted such position. The respondent no.3 also did not challenge the resolution passed by the petitioner in the year 2011 accepting him as an Associate Member along with his father till date.

50. A perusal of the record indicates that the petitioner had filed this writ petition on 18th July, 2016 and had served a copy of the writ

petition on the office of the Government Pleader on 19th July, 2019. A copy of the petition was also served upon the respondent nos.2 and 4. On 20th July, 2016, despite of service of the petition, the representative of the respondent no.2 with the help of Police Sub-Inspector, Bhandup Police Station, took forcibly the record of the petitioner society viz. "I and "J" form of Registers and forcibly recorded the name of the respondent no.3 on the share certificate and "I" and "J" Registers. The petitioner society was thus required to seek amendment to the petition. In my view, action of Tahsildar, Kurla is absolutely high handed, arbitrary and illegal in appointing the authorized person to forcibly take the custody of the records of the petitioner society and to record the name of the respondent no.3 in the share certificate and "I" and "J" Registers though was served with the copy of the petition by purportedly exercising his powers under section 79(2) of the MCS Act. The action on the part of the respondent no.4 is totally illegal, without authority of law and thus deserves to be quashed and set aside.

51. For the aforesaid reasons, I am of the view that the order passed by the respondent no.2 on 28th June, 2016 and the order passed by the respondent no.1 dated 30th March, 2016 deserves to be quashed and set aside.

52. I therefore, pass the following order :-

a). Writ Petition No.1765 of 2016 is made absolute in terms of prayer clauses (a) and (a) (i). The petitioner is permitted to delete the name of the respondent no.3 from the share certificate and also from

“I” & “J” Registers maintained by the petitioner society and any other record showing the name of the respondent no.3 as member within two weeks from the date of this order.

b). If the respondent no.3 applies for membership after complying with the MCS Act, MCS Rules and Bye-Laws of the petitioner, such application to be considered by the petitioner on its own merit.

c). Rule is made absolute on aforesaid terms.

d). There shall be no order as to costs.

e). All parties as well as the Authorities to act on the authenticated copy of this order.

(R.D. DHANUKA. J.)