

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2022 OF 2015

New India Co-operative Housing
Society

... Petitioner

Versus
The Deputy Registrar,
Co-operative Societies
And Others

... Respondents

.....

Mr. Vivek Walawalkar a/w Mr. Viral Amin I/b B. Amin & Co. for the
Petitioner.

Mr. Manish Upadhye, AGP a/w Ms. Uma Palsuledesai, AGP for Respondent
Nos.1 and 2.

Mr. Mihir R. Govilkar I/b Mr. R.V. Govilkar for Respondent No.3.

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CORAM : S.C. GUPTE, J.

DATE : 26 APRIL 2019

(Oral Judgement)

. Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by the Sub-Registrar of Co-operative Societies, purportedly under Section 80 of Maharashtra Co-operative Societies Act. 1960 ("Act"). Although the Sub-Registrar has passed a correct order, as shall presently appear, the Section relied on for passing the order, namely, Section 80(2), appears to be incorrect. The Registrar and his nominee has the requisite power to pass such order under Section 79 Sub-section (2) of the Act.

3 The controversy which gave rise to the impugned order of the Sub-Registrar concerns the deemed membership of Respondent No.3 of the Petitioner society. His application for deemed membership was allowed by the Deputy Registrar of Co-operative Societies by an order dated 7 August 2006. The Deputy Registrar's order was challenged by the Petitioner society before the Divisional Joint Registrar of Co-operative Societies. By his order dated 11 May 2007, the Divisional Joint Registrar dismissed the challenge. A writ petition preferred from that order, namely, Writ Petition No.4567 of 2007, was dismissed by a learned Single Judge of this Court on 1 February 2013. An SLP from that order has been dismissed by the Supreme Court by its order dated 23 April 2019. In the meantime, since, despite this Court having affirmed the orders of the Co-operative authorities concerning the deemed membership of Respondent No.3, the same were not implemented by the Petitioner society, there being no stay in the then pending SLP before the Supreme Court, on the application of Respondent No.3, directions were issued by the Deputy Registrar of Co-operative Societies to the Petitioner under Section 79 of the Act requiring enforcement of the order of deemed membership. It appears that the Deputy Registrar appointed an officer calling upon the Petitioner to produce statutory records to implement the order. The Petitioner resisted the implementation on the ground that its SLP was pending before the Supreme Court and that the Deputy Registrar had no powers under Section 79 to enroll or get recorded the name of Respondent No.3 as a member of the society. Finally, Sub-Registrar of Co-operative Societies by his impugned order dated 29 June 2015, directed the authorized officer to record the membership of Respondent No.3 with police assistance. Police Officer not below the rank of Police Sub-Inspector was directed to co-

operate and make available the society's records to the authorized officer for recording such membership. This order has been challenged in the present petition.

4 Learned Counsel for the Petitioner submits that under Section 79(2) of the Act, Registrar or his nominee has no power to implement an order of deemed membership passed under Section 23 of the Act. Learned Counsel relies on judgments of three learned Single Judges of our Court in the cases of **Mohanlal Bhagwan Pandey Vs. Apurva Co-op. Hsg. Soc. Ltd, Bombay¹**, **Sudhir Co-operative Housing Society Ltd Vs. State of Maharashtra²** and **Indrasen Co-operative Housing Society Vs. State of Maharsthra³**. Relying on these judgments, it is submitted that the only order that can be passed under Sub-section (2) of Section 79 is an order concerning filing of returns and statements under Sub-section (1) of Section 79.

5 Section 79 of the Act is in the following terms :

“79. Registrar’s power to enforce performance of obligations.

- (1) The Registrar may direct any society of class of societies, to keep proper books of accounts with respect to all sums of money received any expended by the society, and the matters in respect of which the receipt and expenditure take place all sales and purchases of goods by the society and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from

1 2009(5) Mh.L.J. 330

2 2010(1) Mh.L.J. 240

3 2014(5) Mh.L.J. 507

time to time; and the officer or officers of the society shall be bound to comply with his order within the period of specified therein.

- (2) Where any society is required to take any action under this Act, the rules or the bye-laws, or to comply with an order made under the foregoing sub-section, and such action is not taken.

(a) within the time provided in this Act, the rules or the bye-laws, or the order as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing. The Registrar may himself, or through a person authorized by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

- (3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of the Act, the rules or the bye-laws, or the order made under sub-section (1) and after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out."

6 As the Section makes it clear in plain terms, Sub-section (2) thereof empowers the Registrar, either himself or through a person authorized by him, to take action, at the expense of the society, where such society is required to take any action under the Act, rules or the bye-laws, as the case may be. The words “including filing of the returns” is one of the many actions, which may be taken under the Act, rules and bye-laws; filing of returns or statements is not the only action contemplated under Sub-section (2) of Section 79. Section 23 of the Act concerns membership of a society. The fundamental principle behind Section 23 is that membership of a co-operative society is open to all. Sub-section (1) of Section 23 is the pivotal provision in Section 23, which provides that no society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of the Act and bye-laws. Sub-section (1A) of Section 23 provides for deemed membership where the society either refuses to accept his application despite his being eligible for admission as a member or communicate its decision to the applicant within sixty days from the date of receipt of such application along with the prescribed fee towards such membership. If any question arises as to whether or not any person has become a deemed member of a society, such question has to be decided by Registrar, after giving a reasonable opportunity of being heard to all concerned parties. If, on the other hand, the society refuses admission to its membership, any person aggrieved by the decision of the society may prefer an appeal to the Registrar under Sub-section (2) of Section 23. Any decision of the Registrar in such appeal is treated as final under Sub-section (3) of Section 23. The Act, rules and the

bye-laws of the Petitioner society in the present case envisage entry of names of each of its members in the register of members and issuance of share certificates to such members. In this scheme of the Act, rules and bye-laws, the Petitioner's refusal of admission to Respondent No.3 to its membership, which was the subject matter of an appeal under Sub-section (2) of Section 23, was struck down and the matter of membership was decided in favour of Respondent No.3. This order, as noted above, was unsuccessfully challenged by the Petitioner first before this Court and later, before the Supreme Court in an SLP. After disposal of the SLP, in the premises, there is no reason why the name of Respondent No.3 should not have been entered in the register of members of the Petitioner and share certificate should not have been issued to him. The society is duty bound under the Act, rules and the bye-laws to recognize Respondent No.3 as its member by entering his name in the register of members and issuing a share certificate to him. This being so and such action being required to be taken under the Act, rules and the bye-laws, any non-compliance thereof is actionable under Sub-section (2) of Section 79. The Registrar in this case had required, after the disposal of the appeal, the Petitioner to enter the name of Respondent No.3 in the register of members within fifteen days. The Petitioner having failed to take such action, the Registrar, either himself or through any person authorized by him, was entitled to take such action at the expense of the society. That is the plain meaning of Sub-section (2) of Section 79 and the Registrar has committed no impropriety or illegality in giving effect to it.

7 The judgment of the learned Single Judge in the case of **Mohanlal Bhagwan Pandey** (supra) is clearly per incuriam. It proceeds only on a

reading of Sub-section (1) of Section 79 and does not take into account Sub-section (2) of Section 79. Based on Sub-section (1) of Section 79, the Court held that it did not give any scope to the Deputy Registrar to pass any order for implementing orders other than those mentioned in the aforesaid section. What the learned Single Judge has missed is Sub-section (2) of Section 79, which, as noted above, empowers the Registrar or his nominee to take action at the expense of the society, when it fails to take action under the Act, rules and the bye-laws within the time provided for it.

8 The judgement in **Sudhir Co-operative Housing Society Ltd** (supra) also construes basically Sub-section (1) of Section 79. That was a case where under original and appellate orders of the Assistant Registrar and the Divisional Joint Registrar, directions were issued to the society to transfer a piece of land to the respondent in the petition. This court held that Section 79(1) does not enable or clothe the Assistant Registrar with powers to issue any such directions. The Court held that this was the job of the Court of law, in that case, a Co-operative Court. The Court was of the view that the authorities below had clearly acted without jurisdiction. These facts are clearly distinguishable from the facts of our case, where the impugned order was correctly passed under Section 79(2). The society was required to take action under the Act, rules and bye-laws and despite having been given a stipulated period within which such action was required to be taken, the society failed to take action, as noticed above.

9 The case of the **Indrasen Co-operative Housing Society Ltd** (supra) involved a question as to whether the society's resolution concerning illegal use of terrace and penalty for obstructing the work of repairs should be

enforced by the Registrar or its nominee under Section 79(2) of the Act. The Court held that the essence of Section 79 was about the maintenance of proper accounts by the society. The Court was of the view that reading of Section 79 *ex facie* made it clear that the provision could not be invoked for adjudicating or issuing any direction in respect of which there is a dispute between the parties. Though these observations create an impression that Section 79 is only for maintenance of proper accounts by the society, that is not really what the Court considered in that case. Section 79(2), as we have noticed above, is couched in very broad terms and if any action, which the society is required to take under the Act, rules and the bye-laws, is not taken within the time stipulated, the Registrar is authorised to take recourse to Sub-section (2) of Section 79 and enforce such action. The judgment in **Indrasen Co-op.Hsg. Soc. Ltd** needs to be restricted to the facts and the controversy in that case. The thrust of the case and its ratio concern whether under Sub-section (2) of Section 79 any dispute between the parties can be adjudicated and direction can be issued in respect thereof. In any event, as noticed below, by the subsequent judgment of the Division Bench of this Court, the suggested construction of Section 79 has been dissented from.

10 A Division Bench of this court in the case of **Bhandara Zilla Parishad Wa Panchayat Samiti Karamachari Sahakari Sanstha Ltd.**, was concerned with the construction of Section 79, particularly, Sub-section (2) thereof. The argument before the court was that Sub-section (2) of Section 79 envisages enforcement of only directions under Sub-section (1). This was negated by the division bench holding as follows :

“Thus sub-section (1) is an enabling provision. It empowers the Registrar/respondent No.1 to issue directions to keep proper books of accounts, etc. Sub-section (2) is a provision wider in sweep than sub-section (1) & provides a measure if the Society does not obey the direction. It envisages not only a direction under its sub-section (1) but of other directions or commands to any society to take any action issued under the other enabling provisions of Maharashtra Co-operative Societies Act or Rules or Bye-laws. Thus a case of non-implementation of a direction issued by the Registrar /respondent No.1 under Section 79(1) is covered under the later part of sub-section (2) while its opening part refers to any directions issued within the **four corners** of the Co-operative Societies Act or then under any Rules or Bye-laws made thereunder.”

11 This judgement was delivered on 7 November 2014, i.e. after the learned Single Judge’s decision in **Indrasen Co-operative Housing Society Ltd.**, and thus can be treated as having impliedly overruled that judgement.

12 Thus, there is no merit in the petition. The Registrar cannot be said to have improperly exercised his jurisdiction or erred in law whilst exercising his powers in passing the impugned order. At any rate, despite orders of the Registrar, passed under Section 23 of the Act, having become final and the challenge before this Court as well as the Supreme Court having been repelled, if the Petitioner is still refusing to implement the order and enter the name of Respondent No.3 in its register of members, there is no reason why this Court should exercise its writ jurisdiction in favour of such party, even assuming that the party is actually right in his

submissions in law. Accordingly, the writ petition is dismissed. The Petitioner shall pay the cost of this petition, which is quantified at Rs.25,000, to Respondent No.3.

(S.C. GUPTE, J.)