

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

WRIT PETITION NO.3337 OF 2018

Kumud Shelat & Ors.

.... Petitioners

versus

Kishore Yashraj Patel & Ors.

... Respondents

.....

- Mr.Girish Godbole a/w Ms.Priya Dave i/b. Ms. Neha Gupta, Advocate for Petitioners.
- Mr.Simil Purohit a/w Ms.Jasmine Kachalia and Mr.Aryan Srivastava i/b. Wadia Ghandy and Co. Advocate for Respondent No.1.
- Mr.Manish Upadhye, AGP, for Respondent No.2 and 3.

**CORAM : INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.
DATE : 04th MARCH, 2019.**

P.C. :

1. Heard learned Counsel for respective parties. Various prayers have been made in the Writ Petition. But essentially learned Counsel for the Petitioner contends that the Santacruz Aster Co-operative Housing Society Limited was constituted with a total of 9 members and the Managing Committee was constituted of 3 members. Further the said 3 members who constituted the Managing Committee have been disqualified by

the orders passed by the Deputy Registrar. Learned Counsel for the Petitioner also further avers that 3 other members of the society are 'non-residents Indians' and are not available for being inducted as Managing Committee members. Insofar as Respondent No.1 is concerned, who is also a member of the Society, the learned Counsel for the Respondent No.1 submits that his client being of advanced age, has expressed his desire not to be inducted as a member of the Managing Committee. Consequently, the society does not have the necessary number of members to even form the quorum for holding the meeting for constituting a Managing Committee. It is further brought to our notice that Deputy Registrar has appointed an Administrator to manage the affairs of the society.

2. Learned Counsel for the Appellant has sought to challenge the order of disqualification passed against the existing Managing Committee Members, as well as seeking consequential orders thereof. In our considered view, the challenge to such an order of disqualification can be made by an

Application under Article 227 of the Constitution of India. Accordingly, liberty is granted to the Petitioner and the erstwhile Managing Committee members to file a separate application under Article 227 of the Constitution of India to challenge the same, if so advised.

3. Apart from the aforesaid prayer, relief has been sought for, against the notice under Ex.N dated 24/04/2018 in terms of which, notice has been issued to the members of the society as to why the society shall not be wound up under section 102(1) (c)(i)(ii)(iv) of Maharashtra Cooperative Societies Act, 1960.

4. Learned Counsel for the Petitioner submits that in the peculiar circumstances that arise in the present case, it would be appropriate case where the State Government ought to exercise its jurisdiction under section 157 of Maharashtra Co-operative Societies Act, 1960 and waive applicability of certain provisions of the Co-operative Societies Act, to a society of the present nature where the membership of the society is extremely small.

5. Considering both the aforesaid submissions we are of the considered view that the Petitioner ought to have make an application to the State Government under 157 of the Maharashtra Co-operative Societies Act, 1960 and the said application ought to contain the specific details and/or specific provisions of which a waiver/relaxation is sought for and the reasons thereof. We grant liberty to the Petitioner to make such application under section 157 of Maharashtra Co-operative Societies Act, 1960 within a period of two weeks from today.
6. Insofar as the notice under Ex.N is concerned, we are of the considered view that the ends of justice would be best sub-served, if the Petitioner upon filing an application under section 157, brings same to the notice of the appropriate authority, who has issued notice under Ex.N and the said authority will do well to await the outcome of the Petitioner's application under section 157 of Maharashtra Co-operative Societies Act, 1960, prior to taking any further steps in the said regard.

7. We make it clear that we have not expressed any opinion on any of the points of issues raised in the present Writ Petition. However, in terms of our directions hereinabove, the present Writ Petition stands disposed with liberty as sought for.

8. It is admitted case between the parties that authorized officer has been appointed by the statutory authority and remains in position and in the peculiar circumstances of present case may continue till orders are passed by the appropriate authority under section 157 of Maharashtra Co-operative Societies Act, 1960 and/or any other order of any competent Court.

9. Learned Counsel for the Petitioner makes an oral submission withdrawing relief sought in prayer clause (e) with liberty to file a separate Petition. The said prayer is allowed.

10. Writ Petition stands disposed of in terms of the aforesaid directions.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)