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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2300 OF 2022**

Shri Ashish Sharma and Ors. Petitioners.

V/s

Smt. Indu Tyagi and Ors. Respondents.

Mr. C.G. Gavnekar a/w Suhas Deokar i/b Chetna Ali for the
Petitioners.

Mr. Prashant P. Kshirsagar a/w Aniruddha M. Sanap i/b Sarvadnya M.
Parab for Respondent No. 4 – Society.

Mrs. M.S. Rane, AGP for Respondent No.5.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 21, 2022

P.C.:-

1] Challenge in the Petition is to the order dated 11/1/2022 passed by the State Government whereby Revision Application preferred by Respondent Nos. 1 to 3 pursuant to the provisions of Section 154 of the Maharashtra Co-operative Societies Act (Hereinafter referred to for the sake of brevity as “the Act”) came to be allowed vide impugned order dated 11.1.2022.

2] Facts necessary for deciding the present Petition are as under:-

3] Petitioners claimed to have preferred an Application under Section 18 read with Rule 17 of the Act before Deputy Registrar, Co-operative Societies, seeking bifurcation of Omega Paradise Phase-1 Co-operative Housing Society Ltd. It is the case of the Petitioners that Petitioners alongwith 40 other members preferred an Application for bifurcation of the aforesaid Society which is in relation to the land bearing Survey No. 174 (Part) and 175(Part) situated at Wakad Pune on 12/9/2018 and 7/9/2019. The said proceedings were posted for hearing on 24/2/2021 by the Deputy Registrar i.e. Respondent No.5. Claim therein was objected by Dinesh Chaudhary and 50 others i.e. other members. In the said proceedings, Respondent No.5 has noticed that the Society of which bifurcation is sought was registered on 5/3/2019 and deemed conveyance was executed under Section 11 of the MOFA on 19/9/2017 and 18/12/2017. The Building Nos. A, B, C, D are consisting of Row Houses i.e. J-1, J-2, J-3 and K-1, K-2 and K-3, whereas Building Nos. E, F, G, H and open space Nos. 1 to 4 and 5, Club House Nos. 1 and 2 stood vested in the Society with area of 26508 sq. meters. A Development Plan Road (D.P. Road) has passed

through the aforesaid land of the Society which has divided the same into two parts. The Apex Society has consented for division, subject to certain conditions. For proper administration of the Society and in the interest of members of the Society, it was decided to bifurcate the Society under Section 18 of the Act, thereby incorporating proposed Omega Paradise A, B, C, D, I, J, K Co-operative Housing Society on Survey Nos.174 (Part) and 175(Part) and proposed Omega Paradise E, F, G, H Co-operative Housing Society on Survey No.174 (Part) and 175(Part), Wakad, Pune. Draft Order of division of Respondent-Society accordingly was issued on 24/2/2021.

4] It appears that Respondent Nos. 1 to 3 preferred an appeal under Section 152 of the Act before Divisional Joint Registrar. Divisional Joint Registrar dismissed the said appeal vide Order dated 25/10/2021 by observing that division sought as per the provisions of Section 17 is already stayed by the Co-operative Court. It was further observed that, of 363 members, 40 members have approached for division under Section 18 read with Rule 17 which has led to passing of Draft Order of division. It was further observed that on the

proposed Order, objections can be invited from the members, so also Apex Society and final order can be passed. As such, order of the Respondent i.e. Divisional Registrar contemplates an opportunity of hearing to Respondent Nos. 1 to 3 by objecting the proposed Order. Respondent No.3 feeling aggrieved preferred Revision under Section 154 before the State Government which is allowed vide impugned order dated 11/1/2022. As such, this Petition.

5] Mr. Gavnekar, learned Counsel for the Petitioners would urge that the order impugned passed by the State Government is contrary to the scheme of Section 18 of the Act read with Rule 17 of the Rules framed thereunder. So as to substantiate aforesaid contentions, he would invite my attention to the scheme of Sections 17 and 18. According to him, even if a dispute before the Co-operative Court in relation to the bifurcation of Society is lodged, same was sought to be carried out in accordance with provisions of Section 17. The said order will not act as an embargo on the right of the Petitioners to claim bifurcation under Section 18. According to him, provisions of Section 18 contemplate satisfaction of the Registrar. He would as

such urge that Draft Order passed by Respondent- Deputy Registrar is always subject to objections raised by the objectors like Respondent Nos. 1 to 3 and that being so, State Government ought not to have interfered with the order impugned. According to him, Respondent Nos. 1 to 3 can always lodge their objections with Respondent- Deputy Registrar which will be decided in accordance with law. If Respondent Nos. 1 to 3 are not satisfied by final order of the bifurcation, Respondent Nos. 1 to 3 will have locus and remedy to question the same. He would urge that the State Government has passed the impugned order ignoring aforesaid position of law. He would further urge that State Government at an interlocutory stage ought not to have interfered with prima facie satisfaction recorded by the Deputy Registrar in the matter of exercising powers under Section 18. According to him, because of passing of the D.P. Road through property of the Society, same got divided into two parts and as such for proper administration of Society and in the interest of members, proposed order of bifurcation in exercise of powers under Section 18 read with Rule 17 is quite justified.

6] Counsel for Respondent Nos. 1 to 3 opposed the claim. According to him, order impugned passed by the State Government is just and proper in the facts and circumstances of the case. He would urge that even if property of the Society got divided into two parts because of passing of D.P. Road, that by itself will not render property of the Society unmanageable. My attention is invited to the fact that members of the Society who are in minority are interested in bifurcation, for their personal interest. A further contention is, once the issue of bifurcation is subjudice before the Co-operative Court in a pending dispute under Section 91 of the Act, Deputy Registrar ought not to have exercised powers under Section 18. It is his further contention that the order impugned is passed without considering the aforesaid factual matrix.

7] I have appreciated the said submissions.

8] It appears that Special General Body Meeting of the Respondent-Society was held on 22/4/2018 in which Resolution was passed under

subject Nos. 1, 3 and 4 which were in relation to bifurcation of the expenses, revised approval for E, F, G, H basement, repair costs and allocation of sinking fund. Subject No.4 was to issue work order for basement repair work. Fact remains that Society consists of total 11 Buildings i.e. A to H. Building Nos. A, B, C, D, I, J, K and E, F, G, H are situated near Road which are separated because of passing of alleged D.P. road. It appears that on one hand, said members who are residing in Building Nos. E, F, G, H are claiming bifurcation of the Society by dividing it into two parts i.e. A, B, C, D, I, J, K and on the other, E, F, G, H. Agenda Notice dated 19/4/2018 of Special General Body Meeting to be held on 22/4/2018 does not speak of subjects to the above effect to be considered i.e. particularly subject Nos. 3 and 4. Rather, agenda pertains to revise approval to the basement repairs of E, F, G, H Buildings and to issue work order for repairing of the same.

9] Fact remains that said Resolution was subject matter of challenge in Dispute No. 69 of 2018 before the Co-operative Court, Pune and the Co-operative Court, Pune has passed order of stay dated

24/9/2020, thereby restraining implementation of Resolution Nos. 3 and 4 of Special General Body Meeting to be held on 22/4/2018 as subjects therein were not part of Agenda of the Meeting. It appears that said subjects were as a sequel of proposal for bifurcation moved by minority group under Section 17 of the Act.

10] It appears that said order of injunction passed by the Co-operative Court which is against the interest of Petitioners was never questioned by them. Petitioners, rather, have taken recourse to the provisions of Section 18 by initiating parallel proceedings for bifurcation of the Society. In the said proceedings, Respondent-Deputy Registrar has formed an opinion about material brought on record and inferred that for proper administration of the Respondent-Society and also in the interest of members, Society needs to be bifurcated. Accordingly passed an order of bifurcation, thereby proposing bifurcation of the assets of the Society. As such, what can be noticed is, Respondent- Deputy Registrar without having regard to the order of injunction passed by the Co-operative Court has proceeded to pass the order of bifurcation under Section 18 irrespective of the fact that only

minority members were seeking bifurcation, whereas majority members have opposed such claim. Divisional Joint Registrar has proceeded only on the ground that Respondent Nos. 1 to 3 will have an opportunity to object to the Draft Order of bifurcation. In the aforesaid backdrop, if we appreciate the order of State Government, it was justified in recording a finding that suggestions given by the Apex Society were not taken into account, the order of bifurcation is not based on balance sheets of recent years and pendency of dispute. State Government has also noticed that bifurcation is contrary to the Circular of the State Government dated 30/7/2004. It appears that District Registrar of Co-operative Societies while passing the order under Section 18 has conveniently avoided effect of order of injunction passed in a dispute, pendency of dispute and the fact that majority of the members are not supporting the claim of bifurcation.

11] In this backdrop, in my opinion, order delivered by the State Government appears to be in tune with the provisions of Sections 17 and 18 of the Act.

12] It appears that subjective satisfaction as contemplated under Section 18 of the Act is not reflected in the order of the Deputy Registrar passed under Section 18. Only the claim of minority members is safeguarded by the said order. That being so, order impugned appears to be just and proper. No case for interference is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)