

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.6470 OF 2022**

1. Suman Vasant Kandharkar,  
Age:68 Years, Occu.: Retired,  
101, Kandharkar Hospital,  
Tilak Nagar, Aurangabad 431005
  2. Kishor Jagganath Pise,  
Age: 68 Years, Occu.: Retired,  
Plot No.5, Ajintha Chs Ltd.,  
Shahnoorwadi, Aurangabad 431005
  3. Rajendra Jadhav,  
Age:39 Years, Occu.: Advocate,  
R/o. Plot No.49, Kanchan Nagar  
Co-operative Housing Society Limited,  
Nakshatrawadi, Aurangabad 431005
  4. Vilas Ramchandra Korhale,  
Age: 74 Years, Occu.: Retired,  
R/o. Plot No.12, Kanchan Nagar  
Co-operative Society Limited,  
Nakshatrawadi, Aurangabad 431005
  5. Ghanshyamdas Gondlal Khandelwal,  
Age:67 Years, Occu.: Retired,  
R/o.: Nawabpura Mondha Road,  
Aurangabad- 431001
- .. Petitioners**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Mantralaya, Mumbai
2. Department of Co-operation  
State of Maharashtra  
Mantralaya, Mumbai
3. Mr. Vishwajeet Kadam,  
State Minister,

Ministry of Co-operation  
State of Maharashtra,  
Mantralaya, Mumbai

4. Joint Registrar,  
Department of Co-operation,  
Aurangabad District Adalat Road,  
Aurangabad 431 005
5. Dy. Registrar,  
Department of Co-operation,  
Aurangabad Taluka,  
Laxmi Apartment,  
Opp. Motilal Complex,  
Nageshwarwadi Road, Nirala Bazar,  
Aurangabad- 431001
6. Piyush Sethi,  
Plot No.6, Kanchan Nagar Chs Ltd.,  
Nakshatrawadi, Aurangabad- 431005
7. Kanchan Nagar Co-operative Housing  
Society Limited,  
Nakshatrawadi, Aurangabad
8. Diwakar Kulkarni,  
Erstwhile Chairman of the Kanchan Nagar  
Co-operative Housing Society Limited,  
R/o. Plot No.72, Kanchan Nagar  
Co-operative Housing Society Limited,  
Nakshatrawadi, Aurangabad .. Respondents

...

Advocate for Petitioners: Ms. Komal Kandharkar  
GP for Respondent/State: Mr. D. R. Kale  
Advocates for Respondent No.6: Mr. V. D. Sapkal,  
Senior Advocate a/w. Mr. Abhishek Patil  
i/b. Mr. M. G. Sansare  
Advocate for Respondents No.7&8: Mr. B. R. Kedar

...

|        |                      |
|--------|----------------------|
| CORAM: | ARUN R. PEDNEKER, J. |
|--------|----------------------|

|              |            |
|--------------|------------|
| Reserved on: | 30.03.2023 |
|--------------|------------|

|                       |                   |
|-----------------------|-------------------|
| <b>Pronounced on:</b> | <b>05.06.2023</b> |
|-----------------------|-------------------|

**JUDGMENT:**

1. Heard.

2. By the present writ petition the petitioners are challenging the order dated 10.06.2022, passed by the Hon'ble Minister whereby the Hon'ble Minister was pleased to allow the revision petition filed by respondent no.6 herein and set aside the disqualification orders passed by the lower authorities i.e. Respondent No.4 / Joint Registrar dated 07.01.2022 & Respondent No.5 / Deputy Registrar dated 29.01.2021 and by the impugned order the Hon'ble Minister has held that respondent no.6 is not a defaulter of the respondent no.7 – housing society and thus not disqualified to be the member of the managing committee of the respondent no.7 – housing society.

3. The issue involved in the present writ petition is, whether respondent no.6 is disqualified under Section [73CA](1)(e) of the

Maharashtra Co-operative Societies Act, 1960 read with Rule 58 of the Maharashtra Co-operative Societies Rules, 1961, to be the member of the respondent no.7 committee, being a defaulter of the respondent no.7 housing society. The brief facts giving rise to filing of the present writ petition can be summarized as under.

4. Respondent no.6 - Mr. Piyush Sethi is the member of respondent no.7 housing society. Elections to respondent no.7 housing society were held on 14.07.2016 and respondent no.6 came to be elected in the said elections. Respondent no.6 was holding 2 plots (plot no.5 and plot no.16) in the respondent no.7 housing society. Respondent no.6 constructed and sold a building consisting of 14 flats on plot no.16 conjointly with one Mr. Abhishek Deshmukh. The Co-operative society in the name of Swaroop Residency Flat Owners Co-operative Housing Society Ltd. was registered under Section 9(1) of the Act by all the flat purchaser of plot no.16.

5. An application for disqualification of respondent no.6 on 05.01.2019 was filed, contending therein that the said application was filed by the President of the society on behalf of respondent no.7 - society. In paragraph no.1 of the said application it is submitted as under "सदर गृहनिर्माण संस्थेने सदरचा अर्ज संस्थेचे अध्यक्ष यांच्यावतीने दाखल केलेला आहे "

[ " Said application has been filed by the Housing Society on behalf of the President of the Housing Society." ]. It was contended in the application that for the period of 2016 to 2021, there was duly elected committee appointed on the society. It was mentioned in the application that respondent no.6, who is member of the managing committee is creating hurdles in the administration. It was further mentioned that that Rs.1,38,200/- is due from respondent no.6 and he has defaulted in the payment of said amount. That demand notices were issued on 11.01.2018 (notice no.108 of Rs.3,920/-) , 07.07.2018 (notice no.193 of Rs.4,640/-), 07.07.2018 (notice no.194

of Rs.1,38,200/-) and again another notice dated 11.01.2018 (notice no.108/2018 of Rs.1,41,890/-).

6. It was contended in the application for disqualification that respondent no.6 has in partnership with Mr. A. S. Deshmukh, has constructed 14 flats on plot no.16 and has sold the flats, but the 14 flat owners are not made members of the society, but the 14 families are residing on the plot no.16 and there is strain on the infrastructure of the society. It is further submitted that plot no.5 is received by respondent no.6 by inheritance and plot no.16 was purchased in partnership and respondent no.6 had constructed and sold thereon 14 flats on plot no.16.

7. It was further submitted in the said application that on 03.12.2017, the resolution was taken to suspend respondent no.6 for a period of 3 years. Thus, it was prayed that looking into the behaviour of respondent no.6 and one Mr. Lalit Mali and they being defaulters of respondent no.7 society should be disqualified from the post of

member of the managing committee of the cooperative society. It was prayed to declare respondent no.6 and one Mr. Mali disqualified. This application was filed before the Deputy Registrar Cooperative Societies.

8. Respondent no.8 – President of respondent no.7 housing society, on 22.01.2021, filed an application for withdrawal of the proceedings before the Deputy Registrar. On 29.01.2021, respondent no.5 Deputy Registrar passed the order of disqualification of respondent no.6 under Section [73CA](1)(i)(e). Respondent no.5 Deputy Registrar held that notices were issued to respondent no.6 for payment of dues and for having not paid the dues respondent no.6 has incurred disqualification. Respondent no.5 Deputy Registrar did not permit the Chairman to withdraw the complaint.

9. Respondent no.6 filed an appeal no.4 of 2021, before respondent no.4 Joint Registrar, against the order dated 29.01.2021, passed by

respondent no.5 Deputy Registrar. Respondent no.4 Joint Registrar by order dated 07.01.2022, upheld the order passed by respondent no.5 Deputy Registrar disqualifying the respondent no.6. Respondent no.4 Joint Registrar in it's order dated 07.01.2022 observed as under:-

" प्रतिवादी क्रमांक २ संस्थेचे ऍड. फारुख पटेल यांनी त्यांचे युक्तिवादामध्ये प्लॉट क्रमांक १६ च्या थकीत रकमेबाबत वादी याना प्रतिवादी क्रमांक ०२ संस्थेचे नोटीस दिल्याचे मान्य केले आहे .

प्रतिवादी क्रमांक ०१ उपनिबंधक, सहकारी संस्था, ता. औरंगाबाद यांचे कार्यालयातील प्रस्तुत प्रकरणाशी संबंधित मूळ धारिका यांचे अवलोकन केले असता, संस्थेचे सन २०१९-२० या कालावधीच्या लेखापरीक्षण अहवालातील महत्वाचा आक्षेप कायदा कलम ७३(कअ) मध्ये नमूद करण्यात आले आहे कि, संस्थेचे संचालक श्री. पियुष सुरेश सेठी यांचेकडे प्लॉट न.१६ वरील थकबाकी रजिस्टर पान क्रमांक १७ प्रमाणे दिनांक ३१.०३.२०१८ अखेर रुपये १,४०,१६०/-, दिनांक ३१.०३.२०१९ अखेर रुपये २,१४,१२०/-, ३१.०३.२०२० अखेर रुपये ३,०१,०००/- थकबाकी असल्याचे नमूद आहे. संस्थेचे आय रजिस्टर (सदस्यांचे नोंदणी पुस्तक) पान क्रमांक १० प्रमाणे १६ नंबरचा प्लॉट श्री. पियुष सेठी व अभिषेक सतीश देशमुख यांचे नावावर आहे. संस्थेने वारंवार नोटीस पाठऊन थकबाकी भरणा करण्याचे सूचित केले आहे. परंतु त्यांनी थकबाकी रक्कम भरणा केली नाही. (नोटीस दिनांक १८.०१.२०१८ व दिनांक १३.१२.२०२०)

महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ७३ कअ (१) (ई) मध्ये पुढील प्रमाणे तरतूद आहे. कलम ७३ कअ (१) (ई) "कोणत्याही व्यक्ती पुढील बाबतीत समितीचा सदस्य म्हणून नेमणूक होण्यास, नामनिर्दिष्ट होण्यास, निवडून येण्यास, स्वीकृत केली ज्याण्यास किंवा सदस्य म्हणून राहण्यास पात्र असणार नाही जर (एक) ती व्यक्ती कोणत्याही संस्थेची कासूरदार असेल तर, (ई) गृहनिर्माण संस्थेच्या बाबतीत, संथाना देणे असलेल्या रकमांच्या प्रदानाची मागणी करणारी टपाल दाखली पाठवलेली नोटीस बजावण्यात

आल्याच्या तारखे पासून तीन महिन्याच्या आत देय रक्कमा चुकत्या करण्यात ज्याने कसूर केली असेल असा सदस्य. "

...

...

" उपरोक्त सर्व निष्कर्ष विचारात घेता वादी यांच्याकडे प्रतिवादी क्रमांक ०२ संस्थेची असलेली थकबाकी भरण्यास वादी यांनी कसूर केला आहे. महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ७३ कअ (१) (ई) मध्ये गृहनिर्माण सहकारी संस्थांच्या संदर्भातील समिती व तिच्या सदस्यांची निर्हरता (अपात्रता) स्पष्ट केलेली आहे. त्यामुळे प्रतिवादी क्रमांक ०१ उपनिबंधक, सहकारी संस्था ता. औरंगाबाद यांचे दिनांक २९.०१.२०२१ रोजीचे आदेश योग्य व कायदेशीर आहेत. त्यामुळे या प्राधिकरणाने दि. १२.०२.२०२१ रोजी प्रतिवादी क्रमांक ०१ यांचे दिनांक २९.०१.२०२१ रोजीच्या आदेशाला पुढील निर्णया पर्यंत दिलेली अंतिम स्थगिती रद्द करण्यात येत आहे. वादीचे अपील फेटाळणे योग्य व कायदेशीर राहिल अशी माझी खात्री झाली आहे. त्यामुळे प्रस्तुत प्रकरणात पुढील प्रमाणे आदेश पारित करण्यात येत आहे. "

English translation of the same reads as under:-

" Advocate Farooq Patel, for the Deft. 2 Society, admits the issuance of notice by the Deft. 2 Society to the Plaintiff over the arrears of the amount for the Plot no. 16 in his argument.

Upon perusal of the original file related to the matter in hand, from the Office of the Deft. 1, Sub-Registrar, Co-operative Societies, Aurangabad taluka, it is found that, the major audit para in the audit report for the period of 2019-2020 of the Society u/s 73 [AA] that, Shri Piyush Sethi, the director of the Society had the arrears of payment against the Plot No. 16, as per the Arrears Register Page 17, on dated 31-3-2018 were Rs. 1,40,160/-, Rs. 2,14,120/- as on 31-3-2019 and Rs. 3,01,000/- as on 31-3-2020. The page no. 10 of the income register [Register of Membership] shows

*that the Plot no. 16 is in the name of Shri Piyush Sethi and Abhishek Satish Deshmukh jointly. The Society has issued notices from time to time for the payment of default amount, but they have not paid the default amount. [Notices dated 18-1-2018 and 13-12-2020]*

*The Section 73 [AA][1][e] of the Maharashtra Co-operative Societies Act, 1960 provides as under:*

*" Any person shall not be qualified to be appointed or nominated, elected or co-opted or to be remained as member of the Committee, if 1. Such a person is the defaulter of any Society, 2. having defaulted in the payment of the amounts recoverable within three months from the date of notice issued under certificate of posting demanding the payment of the dues to the Society, in case of housing society."*

*...*

*...*

*" Taking into consideration all the above criteria, the Plaintiff has defaulted in making payment of the arrears due to the Respondent No. 2 Society. As per Section 73[AA][1][e] of the Maharashtra Co-operative Societies Act, 1960 has clearly provided the constitution of the Committee and disqualification of the members. Therefore, the order dated 29-1-2021 of the Deft. 1 Dy. Registrar, Co-operative Societies, Tq. Aurangabad are proper and legal. Therefore, the stay on the order dated 29-1-2021 of the Deft. 1 by this Authority on 12-2-2021 until further orders is hereby vacated. I am convinced that rejecting the appeal by the Appellant would be proper and legal. Therefore, following order is passed in the matter:"*

Respondent no.6, thereafter, filed a revision against the order dated 07.01.2022, of the Joint Registrar before the Hon'ble Minister.

10. On 02.02.2022, the first date of hearing was fixed before the Hon'ble Minister. On 06.04.2022, the second date of hearing was fixed and the case was heard and the matter was closed for orders. It was strongly disputed by the petitioners that hearing was fixed and took place on 06.04.2022. This aspect I will deal with in detail little later. The impugned order is passed by the Hon'ble Minister on 10.06.2022, whereby the Hon'ble Minister was pleased to allow the revision petition and set aside the orders of disqualification passed by respondent no.5 as well as respondent no.4. The Hon'ble Minister under order dated 10.06.2022 has observed as under:-

" कलम ७३ कअ (ई) नुसार अर्जदारांना अपात्र ठरविण्याचे आदेश देखील वस्तुस्थितीशी विसंगत आहेत. कारण अर्जदारांनी निदर्शनास आणून दिलेल्या वस्तुस्थितीनुसार प्रतिवादी क्र.३ कांचननगर गृहनिर्माण सहकारी संस्था मर्या, औरंगाबाद हि प्लॉट धारकांची सहकारी गृहनिर्माण संस्था आहे. या संस्थेतील प्लॉट क्र. ५ हा अर्जदारांना दिलेला आहे. या प्लॉट वरील घरात अर्जदार वास्तव्यास आहेत. संस्थेतील प्लॉट क्र.१६ हा श्री. अभिषेक

सतीश देशमुख याना दिला आहे व त्यात अर्जदारांची भागीदारी आहे. या प्लॉट क्र. १६ वर १४ सदनिकांची इमारत बांधण्यात आली होती. या इमारतीचे नाव स्वरूप रेसिडेन्सी फ्लॅट ओनर्स को.ओ.हो.सो. दिनांक ३०.०६.२०१६ रोजी नोंदविण्यात आली आहे.

प्रतिवादी क्र.३ कांचननगर गृहनिर्माण सहकारी संस्थेच्या पोटनियमातील तरतुदीनुसार सदनिका धारकांसाठी रु. ५,०००/- हस्तांतरण शुल्क आकारण्यात आले व प्लॉट क्र.१६ वरील इमारतीमध्ये राहणाऱ्या १४ सदनिका धारकांनी एकूण रु. ७०,०००/- एवढे हस्तांतरण शुल्क त्यांच्या स्वरूप रेसिडेन्सी गृहनिर्माण संस्थेची नोंदणी होण्यापूर्वी म्हणजे दिनांक ३०.०५.२०१६ पूर्वी प्रतिवादी क्र.३ संस्थेकडे भरणा केले आहे. याचा अर्थ दिनांक ३०.०५.२०१६ नंतर जर प्लॉट क्र. १६ शी संबंधित कोणतेही देणे, शुल्क इ. प्रतिवादी क्र.३ कांचन नगर सहकारी गृहनिर्माण संस्थेस देण्याची संपूर्ण जबाबदारी त्या प्लॉटवर नोंदविलेल्या स्वरूप रेसिडेन्सी गृहनिर्माण सहकारी संस्थेची आहे आणि याबाबत प्रतिवादी क्र.३ या संस्थेने सहमत नसल्याचा कोणताही युक्तिवाद सादर केलेला नाही. शिवाय प्रतिवादी क्र.२ यांच्या आदेशात अर्जदार यांच्याकडे कोणत्या कालावधीची कोणत्या कारणासाठी किती रक्कम थकीत होती व ती रक्कम किती होती इ. कोणतीही आवश्यक असलेला तपशील नमूद केलेला नाही. केवळ एखाद्या संस्थेने तीन वेळा नोटीस दिली म्हणून थकबाकी योग्य कारणासाठी व योग्य रकमेची आहे असे समजून व्यवस्थापक समिती सदस्य पदावर राहण्यास अपात्र ठरविण्याचे अधिकार अर्धन्यायिक अधिकाऱ्यांनी वापरून अश्या स्वरूपाचे मोघम आदेश काढणे हे निश्चितच संबंधितांवर अन्याय करणारे आहे असे सुनावणीच्या दरम्यान स्पष्ट झाले आहे."

English translation of the same reads

thus:-

" The orders of disqualifying the applicant under section 73 [AA][e] are also contradictory to the facts. Because, as per the facts as brought to the notice by the applicant, the Deft. 3 Kanchannagar Co-operative Housing Society Limited, Aurangabad is a society of plot owners. The plot no. 5 is allotted to the applicants. The applicant is residing in the house built over the said

*plot. The plot no. 16 is allotted to Shri Abhishek Satish Deshmukh with a share of the applicant. A building of 14 apartments was built over the plot no. 16. The name of the building is Swaroop Residency Flat Owners Co-operative Housing Society, registered on 30-6-2016.*

*As per the by-laws of the Deft. 3 Kanchannagar Co-operative Housing Society, the transference charge of Rs. 5,000/- was fixed for the flat-owners. 14 flat-owners residing in the building over plot no. 16 have paid Rs. 70,000/- towards transference charges to the Deft. 3 Society on 30-5-2016 i.e. before the registration of their Swaroop Residency Housing Society. This means that, the entire responsibility to pay any dues related to the plot no. 16 after 30-5-2016 rests with Swaroop Residency Co-operative Housing Society registered on the plot no. 16 and no argument suggesting that the Deft. 3 is no agreed to this, has not been advanced. Apart from this, no details as to what amounts were default with the applicant and from when and for what reason has been given in the order of the Deft. 2. Only a notice has been issued by a Society for three times, therefore, assuming that the arrears are for proper reasons and proper amounts, the quasi-judicial authority has exercised the powers to disqualify the managing committee and issued superficial orders, is certainly causing injustice upon the concerned and same has been proved during the inquiry. "*

11. The petitioners submitted before this court that no hearing was granted before the Minister on 06.04.2022. The matter was not fixed

for hearing on 06.04.2022 and thus there was no hearing on 06.04.2022, and consequently the order passed by the Hon'ble Minister be set aside and the matter be remitted back to the Hon'ble Minister for re-consideration.

12. That the petitioners were not given opportunity of hearing by the Hon'ble Minister before passing the impugned order dated 10.06.2022. The learned counsel for the petitioners submits that she has filed a reply on 13.04.2022. In the Writ Petition it was pointed out by the petitioners that there was no hearing on 06.04.2022. She submitted that on 13.04.2022, she filed a reply and on which date it was not informed to her that hearing was concluded on 06.04.2022. She has also relied upon the letter on behalf of respondent no.5, deputing Mr. Devkar to appear on his behalf on 13.04.2022. That the alleged roznama on 06.04.2022 did not bear signature of Advocate for respondent society and the impugned order records presence of some

advocate for the society. All the above facts prove that there was no hearing on 06.04.2022.

13. In the writ petition the petitioners have made following averments at paragraphs no.6 to 8 as under:-

*"6. The Revision Application No.28 of 2022 was filed before the Respondent No.3, and the present Order has been passed without considering the reply of the Petitioners or hearing on the matter. On the first date of hearing on 02<sup>nd</sup> February 2022, the Petitioner no.1 filed her objection to grant of any interim/ ad interim relief and no interim relief was granted on the said date and the matter was adjourned to 13<sup>th</sup> April 2022.*

*7. The Order alleges that matter was heard on 06<sup>th</sup> April 2022 however no such Notice of hearing was ever given or received by the Petitioners whereby the date of the hearing was pre-poned. The Petitioners in fact filed their reply before the Respondent No.3 on the date of hearing on 13<sup>th</sup> April 2022 and the matter was closed for hearing and even on that day, no intimation was given about the alleged hearing to have been held on 06<sup>th</sup> April 2022. Hereto annexed and marked is the Say and pursis along with acknowledgment receipt of the Petitioners as **EXHIBIT A.***

*8. Without considering the Say or giving opportunity to be heard, the impugned Order has been illegally passed in blatant defiance of not just the provisions of Maharashtra Co-operative*

*Housing Societies Act, 1960, but also principles of Natural Justice, which have to be taken into serious consideration. The impugned Order dated 10<sup>th</sup> June 2022 is hereto annexed at **EXHIBIT-B.**"*

14. In the writ petition, in ground 12(b) it was noted as under:-

*"b. It is to be noted that the Order dated 10<sup>th</sup> June 2022 records holding of hearing on 06<sup>th</sup> April 2022 whereby it is alleged that some arguments have taken place between the parties which is an out and out lie as no notice for hearing or information of hearing was received by the Petitioners and in fact the matter was adjourned to 13<sup>th</sup> April 2022 from the first date of hearing i.e. on 02<sup>nd</sup> Feb 2022;"*

15. This court on 24.06.2022, while issuing notice in the matter, taken into consideration the submissions of the petitioners as under:-

*"3. Serious allegations have been levelled against the respondent No.3 who happens to be the State Minister of Cooperation to the effect that the order under challenge refers to about he having heard the arguments of the learned advocate for the petitioners, when in fact no such hearing had taken place on the dates mentioned in the order and when their learned advocate was not even present before the learned Minister. Obviously, these are factual disputes which will have to be addressed at a full-fledged hearing. Today is the first date when the matter has been listed*

before this Court. Even the respondent No.4 would need some time to controvert these allegations."

and issued notice and granted interim relief in terms of prayer clause "C".

*"Pending the final disposal this Hon'ble Court pleased to stay the execution of Order and Judgment dated 10<sup>th</sup> June 2022 passed by the Respondent No.3 in Revision Application No.28 of 2022;"*

This court called for the Records and Proceedings in the case. Thereafter, the matter was adjourned on few occasions.

16. On the submissions made by the petitioners this court had called for the records of the proceedings. On perusal of the record, it was noticed that on 27.01.2022 notice of hearing was given by the Additional Secretary, Maharashtra State for the hearing of the matter on 02.02.2022. Thereafter another notice is issued on 31.03.2022 by Shraddha Kochrekar, Additional Secretary, Maharashtra State dated 31.03.2022 for the hearing of the matter on 06.04.2022 at 12:30 am. The Roznama has also indicted that hearings were conducted on 02.02.2022 and the matter was fixed

on 06.04.2022. The record produced before this court indicates that the Advocate for the petitioners were present for the hearing on 06.04.2022 and an application for adjournment was also made by the petitioners which is taken on record during the proceedings on 06.04.2022.

17. It was contended by the petitioners that no hearing was granted to her. The roznama shows that on 02.02.2022 matter is fixed for 06.04.2022 and there are signatures of the Advocates for the petitioners on the roznama of 06.04.2022. It is mentioned in roznama that an application for adjournment is tendered on 06.04.2022. The same is received by the Minister. The Roznama indicates that the matter is closed for order on 06.04.2022. There is no observation in the roznama fixing the matter for 13.04.2022. In the records there is no notice for hearing on 13.04.2022. However, on the record, there is an original document i.e. a letter dated 11.04.2022, wherein respondent no.5 Deputy Registrar has written a note to Mr. Yashwant Devkar and directed him to remain present

on 13.04.2022. It is not known how the original copy of letter dated 11.04.2022 is on record of the file.

18. From the record, it appears that the matter was fixed for hearing on 06.04.2022. The petitioners were aware of the same and they remained present on 06.04.2022 however they had sought adjournment on that day which was obviously not granted and the matter was concluded on 06.04.2022. There is no notice of hearing on 13.04.2022. Thus, from the above facts the statement made in the petition that at para 6 that on 02.02.2022 the matter was adjourned to 13.04.2022 is incorrect. The assertion made at para 7 of the writ petition that the impugned order of the Hon'ble Minister alleges that the matter was heard on 06.04.2022, when there was no hearing fixed on 06.04.2022 is also not correct. To say the least, the petitioners were present for hearing on 06.04.2022 and the Hon'ble Minister has conducted the matter on 06.04.2022. Thus, it would not be appropriate for me to remand the matter

back to the Hon'ble Minister and I proceed to determine the matter, on merits.

**Contentions of the petitioners**

19. On merits it is contended by the petitioners that the records and proceedings were not called for verification before the alleged final hearing on 06.04.2022. The petitioners also further submits that respondent no.8 earstwhile Chairman sought to withdrew the proceedings before respondent no.5 without general body or managing committee resolution. She submitted that there is a resolution on record dated 26.09.2016, passed by the general body and item 9 of proposed works, wherein it was resolved to take action on the defaulter members and in view of the said resolution the President on behalf of the society had filed the complaint against respondent no.6. The general body had not resolved to withdrew the complaint and thus the Chairman was not authorized to withdraw the complaint and the proceedings could not have been validly withdrawn except by the society.

20. It is further contention of the petitioners that when the committee member is disqualified under Section [73CA](1)(e) of the Act, he automatically ceases to be a member of the committee and that there are no separate proceedings required under Section 78A of the Act to remove the members.

21. The petitioners further contended that respondent no.6 has not been able to show a transfer of membership in favour of Swaroop Residency. The petitioners contended that the cessation of membership is contemplated under Section 25 of the Act. Section 25A of the Act provides for removal of names of members from membership register of society. Rule 24 of the Rules provides for the procedure of transfer of shares and bye-law no.38 provides the explicit procedure in (i) to (ix) steps to be followed while transferring the shares in the property of the society. Thus, the petitioners contended that

there is no transfer of membership in favour of Swaroop Residency.

**Contentions of Respondent No.6**

22. Per contra, learned counsel appearing for respondent no.6 submits that the order of the Taluka DDR disqualifying Piyush Sethi under Section [73CA](1)(e) of the Act was vague on the aspect of the resolution passed by the general body meeting dated 29.09.2016 against respondent no.6. That the orders passed by the authorities were in contravention of Section 78A(1) and the Hon'ble Minister has rightly held that the withdrawal purshis filed by respondent no.8 has binding effect.

23. The learned counsel for respondent no.6 further submitted that this court should not interfere with the order passed by the Minister for the reasons that the petitioners have approached this court with undue haste and allegation is made in the writ petition that there was no appearance on 06.04.2022 and that the

hearing was fixed on 13.04.2022 and that she had no knowledge of any conduct of proceedings on 06.04.2022.

24. However, when records and proceedings were called it was noticed that she had appeared on 06.04.2022 and she has even tendered application for adjournment and the same is taken on record during the time of hearing and that the Advocate for the petitioners has also signed the roznama. There is evidence that the matter was closed for orders. It is also necessary to know that the roznama on 02.02.2022 also indicates that the matter is fixed on 06.04.2022. There is no roznama indicating that the matter is fixed on 13.04.2022. Reply filed by the respondent on 13.04.2022 is of no consequences when the matter is already fixed for order. There was reply filed by the parties before the Minister before the final hearing of the matter which concluded on 06.04.2022. The learned counsel submits that when the petitioners made a wrong statement before this court and obtains an interim order, this court

should not exercise the discretionary powers and interfere with the orders passed by the Hon'ble Minister.

**Consideration & Conclusion:**

25. Having considered the rival submissions the questions fall for my consideration are as under:-

"1] Whether respondent no.6 has transferred the plot no.16 in favour of Swaroop Residency and whether respondent no.6 is liable for payment of dues qua plot no.16 after the transfer ?

2] Whether the respondent no.6 is disqualified under Section [73CA](1)(e) read with Rule 58 and whether any separate proceedings are necessary to be initiated under Section 78A for removal of respondent no.6 ?

3] Whether respondent no.8 was authorized by the society to file a complaint by the resolution dated 29.09.2016 and if so whether he was also authorized to withdraw the complaint and whether the withdrawal is complete once

the withdrawal application is filed in the court ?

**Consideration:-**

26. The relevant provision of the Maharashtra Co-operative Societies Act and Rules for dealing with the above questions are quoted below:-

**"Section 25 Cessation of membership**

*A person shall cease to be a member of a society on his resignation from the membership thereof being accepted, or on the transfer of the whole of his share or interest in the society to another member, or on his death, or removal or expulsion from the society, or where a firm, company, any other corporate body, society or trust is a member, on its dissolution or ceasing to exist."*

**"Section 25A Removal of names of members from membership register**

*The committee of a society shall remove from the register of its members the name of a person who has ceased to be a member or who stands disqualified by or under the provisions of this Act or the rules made thereunder for being the member or continuing to be the member of a society:*

***Provided** that, if the society does not comply with the requirement of this section, the Registrar shall direct such society to remove the name of such person, and the society shall be bound to comply with such direction."*

**"Rule 24 Procedure for transfer of shares**

*(1) No transfer of shares shall be effective unless,-*

- (a) it is made in accordance with the provisions of the by-laws;*
  - (b) a clear fifteen days' notice in writing is given to the society indicating therein the name of the proposed transferee, his consent, his application for membership, where necessary, and the value proposed to be paid by the transferee;*
  - (c) all liabilities of the transferor due to the society are discharged; and*
  - (d) the transfer is registered in the books of the society.*
- (2) Any charge in favour of the society on the share so transferred will continue unless discharged otherwise."*

**"SECTION [73CA](1)(e)**

***[73CA] Disqualification of committee and its members***

*(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he-*

*(i) is a defaulter of any society;*

*Explanation.- For the purposes of this clause, the term "defaulter" includes-*

*(a)...*

*(b)...*

*(c)...*

*(d)...*

*(e) in the case of housing societies, a member who defaults the payment of dues to the society within three months from the date of service of notice in writing served by post under certificate of posting demanding the payment of dues;"*

**"Rule 58 Disqualification of committee and its members**

*When on communication by the Chief Executive Officer of society or otherwise, the Registrar comes to know that any member of the committee incurs disqualification as mentioned in section 73CA and the Bye-laws, the Registrar shall, after giving an opportunity of being heard, issue an order of cessation of membership of such member from the committee of the society;*

***Provided** that, the Registrar shall decide the matter within sixty days from the date of such communication or otherwise."*

27. In the instant case, the following steps were taken by the respondent no.6 for transferring plot no.16. The transfer charges are paid on 30.05.2016 and thereafter NOC was granted by the society that all dues were cleared by the Swaroop Residency and No Dues certificate was issued by the respondent no.7 – society.

28. It is to be further noted that Respondent No.7 society had issued no objection certificate for formation of the cooperative society on plot no.16 for the flat purchasers and it had given consent / no objection to the members to construct apartment on plot no.16. The respondent no.7

society has amended and adopted new bye-laws and in terms of the amended bye-laws the members can construct plot apartments through the developers, the flat purchasers can form flat type society if there is less than 10 members the flat purchasers can form the apartment association. The respondent no.7 - society has given consent to obtain building permission, to construct the building on plot no.16 and dispose of the flat to the respective purchasers and the purchasers would have liberty on forming the housing society if there are more than 10 members. There is a registration certificate issued to the Swaroop Residency Flat Owners Co-operative Housing Society Ltd. on flat no.16, Gut No.2, Kanchannagar, Nakshatrawadi, Taluka - Aurangabad and is classified as housing society with sub-classification as "भाडेकरु सहभागीदारी". The transfer charges are paid on 30.05.2016 of Rs.70,000/-. It is noted in the receipt for transfer that transfer premium is charged of each flat owner at a rate of Rs.5000 i.e.  $5000 \times 14 = \text{Rs.70,000/-}$ . Transfer

charges is accepted from the proposed Swaroop Residency Flat Owners Co-operative Housing Society Ltd. and there is a transfer certificate issued by the co-operative housing society transferring the shares of Abhishek Deshmukh and Piyush Sethi to Swaroop Residency Flat Owners Co-operative Housing Society on 07.07.2016.

29. Based on the above documents, it can be inferred that all the procedure as contemplated under the Act and the Rule for transfer are completed as far respondent no.6 is concerned. It is for the respondent no.7 society as well as the Swaroop Residency to get their name on the I-register. After the respondent no.7 society had accepted the transfer premium had issued a transfer certificate, the respondent no.6 is not liable to make any payment for the any charges on plot no.16 after the transfer of the plot to Swaroop Residency.

30. From the material on record and analysing the provision of Section [73CA] (1) (e), the

disqualification under Section [73CA] (1) (e) would be incurred only if the member defaults in the payment of dues to the society within three (03) months of the date of service of notice in writing served by the post under certificate of posting demanding the payment of dues. The dues are qua plot no.16 and the same are for the period after 2016. Respondent no.6 has transferred the plot after obtaining the consent from the society by payment of transfer premium of Rs.70,000/- on 30.05.2016. The transfer certificate being issued by respondent no.7 the Kanchan Nagar Co-operative Housing Society Ltd., respondent no.6 cannot be held to be disqualified for any dues that may accrue after 30.05.2016. It is also pertinent to note that the authorities below i.e. respondent nos. 4 and 5 have not even examined the aspect of the dues of respondent no.6 qua respondent no.7 society. They have merely proceeded on the basis there is a notice issued by the society for payment of dues and that the dues are not paid by

respondent no.6 and, as such, respondent no.6 is disqualified.

31. The said authorities have mis-directed itself by not examining that respondent no.6 is not liable to make payment of any charges towards the plot no.16, which stood transferred with the consent of the society. The society having accepted the transfer charges and having granted the transfer certificate the further process of enrolling the newly transferred member i.e. Swaroop Residency Flat Owners Co-operative Housing Society Ltd. is purely an exercise between society and the newly entered member. Thus, the Hon'ble Minister has not committed any error in holding that the authorities have not examined the aspect of dues payable by respondent no.6 and, thus, the order passed by the Hon'ble Minister cannot be said to be erroneous.

32. Since, I have held that respondent no.6 is not liable for the payment of the dues after 30.05.2016 qua the transferred plot no.16, other

issue raised by the parties as regards the requirement of an order under Section 78A of the Maharashtra Co-operative Societies Act, 1960 for removal of respondent no.6 on the post of the member of the managing committee is not required to be dealt with.

33. As regards the issue of withdrawal of complaint by the President of the respondent no.7 society, I am of the view that the action for disqualification is initiated by the Registrar on receipt of information from the Chief Executive Officer of the society or from any other source as provided in Rule 58 of the Maharashtra Co-operative Societies Rules, 1961. The withdrawal of complaint by the President of the respondent no.7 society would be of no consequence as the disqualification proceeding can be proceeded with by the Registrar once he is in knowledge of default. Once default is brought to the knowledge of the Registrar, he is entitled to inquire into it by verification of the record of the society or any other relevant material and after giving

opportunity of hearing to the concerned member, pass appropriate orders.

34. Since I have held that there is no default committed by respondent no.6 for dues of plot no.16 after the transfer of the said plot to the Swaroop Residency Flat Owners Co-operative Housing Society Ltd. with concurrence of the respondent no.7 society, I see no merit in the writ petition and the same is dismissed.

**[ARUN R. PEDNEKER, J.]**

35. At this stage, the petitioners have made prayer for continuation of interim relief which is rejected for two counts. The first is, that the interim relief was granted on the statement of the petitioners, that no hearing was conducted before the Hon'ble Minister on the date alleged in the impugned order i.e. 06.04.2022, which is found to be incorrect. The second is, for the reason that if the interim order is extended, respondent no.6

would remain disqualified. I have held in this Judgment that respondent no.6 is not liable to pay any dues of respondent no.7 society. As such, no disqualification is incurred by respondent no.6. Thus, in view of this, interim relief cannot be continued.

**[ARUN R. PEDNEKER, J.]**

marathe