



Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.-5096 OF 2022**

Shahid Tamboli and Others

...Petitioners

Vs.

Divisional Joint Registrar Co-Op. Societies and
Others

...Respondents

Mr. Rushabh Vidyarthi with Mr. Shaswat Vidyarthi, Mr. Parth Parikh i/b
Hakim Salim A.R., for Petitioners.

Mr. C.D. Mali, AGP for State- Respondent Nos. 1 to 4.

Mr. Saurabh Vivek Patil, for Respondent No. 3.

CORAM:- N. J. JAMADAR, J.

DATE:- 20th JULY, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2) The petitioners who are the former members of the Managing Committee R-Euphoria Phase II, Co-operative Housing Society Ltd., the respondent No. 2, take exception to an order dated 4th February, 2022, passed by the Divisional Joint Registrar, in Revision Application No. 145 of 2021, whereby the Revision Application preferred by the petitioners and other

committee members came to be dismissed by affirming an order passed by the District Deputy Registrar on 8th April, 2021, declaring that the petitioners and other committee members had incurred disqualification under Section 154B-23 (1) (iii) of the Maharashtra Co-operative Societies Act, 1960 (“the Act, 1960”) for having committed default in furnishing the documents to respondent No. 4, a member of respondent No. 2- Society, under Section 154B-8 (2) of the Act, 1960 and thereby disqualifying them from being and becoming a member of the Committee for a term of five years.

3) The Petition arises in the backdrop of the following facts :

(a) Respondent No. 2 is a Co-operative Housing Society registered under the provisions of the Act, 1960 and especially governed by Chapter XIII-B of the Act, which contains a fasciculous of provisions for Co-operative Housing Societies. Petitioners and other committee members were elected to the Committee of the respondent No. 2 – Society. Petitioner No. 1 was the Chairman, Petitioner No. 2, the Secretary, and petitioner No. 3, the Treasurer. The third respondent was also a member of the Managing Committee of the respondent No. 2- Society. He was also the Chairman of the Committee till October, 2016.

(b) On 24th October, 2019, the respondent No. 3 made an application to the Chairman of the Society, seeking copies of documents, including Minutes of Meeting of Special General Body Meeting, AGM and Managing Committee monthly meeting held on 30th September, 2019 and a copy of the agreement

between the Runwal and Kunal and E-Euphoria Phase II, Co-operative Housing Society Ltd, signed by Chairman and Secretary on 7th August, 2017, receiving thereunder a sum of Rs.16,00,000/-.

(c) The petitioners claim that the respondent No. 3 was not residing in his two flats, situated in respondent No. 2-Society. The petitioner thus could not serve the acknowledgment of the receipt of the said letter despite efforts and eventually the acknowledgments were forwarded by speed post vide communication dated 11th November, 2019 and e-mail dated 29th November, 2019.

(d) Alleging that the committee committed default in furnishing the copies of the documents, as sought, the respondent No. 3 lodged the complaint before the DDR on 26th November, 2019. DDR vide letter dated 5th March, 2020, called upon the petitioners to furnish reply. Suitable reply was submitted on 16th March, 2020. It was informed, *inter alia*, that all the documents were furnished to the respondent No. 3 and other members of the Society from time to time and particularly the documents sought by the respondent No. 3 were sent by post on the address of respondent No. 3 on 22nd October, 2019.

(e) Eventually, the DDR addressed a notice on 23rd October, 2020, calling upon the petitioners to show cause as to why action under Section 154-B of the Act, 1960, be not taken against the petitioners. The petitioners appeared and furnished an explanation. After hearing the parties, the DDR issued a formal notice under Section 154B-23 (1) (iii) and (3) of the Act, 1960, calling upon the

petitioners to show cause why they should not be disqualified for a term of five years.

(f) After providing an opportunity of hearing and considering the submissions canvassed, by an order dated 8th April, 2021, the DDR was persuaded to return the findings that the petitioners had committed default in furnishing the copies of the documents within the period of 45 days stipulated by Sub Section (2) of Section 154B-8 and, therefore, the petitioners and other committee members had incurred disqualification under Section 154B-23 (1) (iii) and, accordingly, declared them ineligible to continue to be a member of the Managing Committee of respondent No. 2 and also from being elected, co-opted or nominated as a member of the Committee.

(g) The petitioners and other members carried the matter in revision before the Joint Registrar, Pune, in Revision Application No. 145 of 2021. The Joint Registrar did not find any reason to interfere with the order passed by the DDR. It was, *inter alia*, observed that it did not appear that the committee members had furnished all the documents sought by the respondent No. 3 within the period prescribed under Section 154B-8 (2) of the Act, 1960. Neither there was any jurisdictional error nor procedural defect in the order passed by the DDR. Resultantly, the revision came to be dismissed.

4) Being aggrieved the petitioners have invoked writ jurisdiction of this Court. The petitioners, *inter alia*, assert that the respondent No. 3 had prosecuted the complaint before the authorities *mala fide*. In fact, the

respondent No. 3, being a member of the Managing Committee, was privy to all the decisions and documents. The authorities below, despite having found that the committee had made *bona fide* efforts to furnish the documents to the respondent No. 3, proceeded against the petitioners and other committee members merely for not adhering the time limit of 45 days. The impugned orders thus suffer from non-application of mind and failure to give due weight to the harsh consequence of disqualification of democratically elected committee members.

5) An-affidavit-in-reply is filed on behalf of the respondent No. 3 opposing the Petition.

6) I have heard Mr. Rushabh Vidyarthi, the learned Counsel for the petitioners, Mr. C.D. Mali, the learned AGP for State-respondent Nos. 1 and 4 and Mr. Saurabh Patil, the learned Counsel for the respondent No. 3, at some length. The learned Counsel took the Court through record of proceeding before the authorities below and the material on record.

7) Mr. Vidyarthi would urge that the authorities below lost sight of the fact that the respondent No. 3, who was himself a member of the Managing Committee, had sought the documents *mala fide* and the entire action was actuated by a design to bring about the consequence of disqualification of the petitioners and other Committee members for a minor infraction. Amplifying the submission, Mr. Vidyarthi would urge that in fact the respondent No. 3 was had very well in his possession the copy of the agreement between Runwal

Developers and Kunal and E-Euphoria Phase II, Co-operative Housing Society Ltd.; the second requisitioned document. The motive behind seeking the documents, despite being in possession thereof, must have entered the determination by the authorities below. The provisions contained in Section 154B-8 were required to be construed in light of the object, the legislature intended to achieve. It is certainly not to unseat democratically elected committee members, urged Mr. Vidyarthi. To buttress this submission, Mr. Vidyarthi placed a strong reliance on a decision of this Court in the case of Jyotindra R. Shah and Other Vs. Divisional Jt. Registrar, Co-Operative Societies ad Others¹.

8) Secondly, according to Mr. Vidyarthi, the DDR also lost sight of the fact that the respondent No. 3 had made the complaint of non furnishing of the documents, sought by him even before the expiry of the period of 45 days. Thirdly, the petitioners had done all that which was within their powers to furnish the documents to respondent No. 3. The petitioners never intended to keep the documents away from respondent No. 3 or avoided to supply the documents. It was only because of the non-occupancy of flats in the Society by the respondent No. 3, the documents could not be supplied to respondent No. 3 within the stipulated period. In these circumstances, the petitioners could not have been visited with the consequences of disqualification.

1 **2014 (6) Mh.L.J. 599**

9) Mr. Vidyarthi laid emphasis on the fact that the DDR recorded a finding that the petitioners had made an effort to furnish the documents to respondent No. 3 and, yet, they were disqualified for the sole reason that they failed to adhere to the time limit prescribed in Section 154B-8 (2) of the Act, 1960. Mr. Vidyarthi, premised on the aforesaid finding, advanced a two-pronged legal submission. One, the time limit prescribed under Section 154B is not mandatory but must be construed to be directory so as to advance the object of Act, 1960. It was urged that mere use of the word 'shall' does not lend every part of a provision mandatory character. Furnishing of the documents enumerated of Sub Section (1) of Section 154B-8 is indispensable and thus mandatory. However, the time limit of 45 days, according to Mr. Vidyarthi, cannot be attached the same element of imperativeness. Mr. Vidyarthi would thus urge that the time limit of 45 days be construed to be directory.

10) To lend support to this submission, Mr. Vidyarthi placed reliance on a judgment of Delhi High Court in the case of **M/s. Kannu Aditya India Ltd. Vs. State Bank of India**², wherein the time limit prescribed under Section 13(3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was construed to be directory.

11) In any event, according to Mr. Vidyarthi, the prescription to supply the documents is of procedural nature and, therefore, deserves to be construed as directory. Reliance was placed on the decisions of the Supreme Court in the

2 2018 SCC Online Del 12208

cases of Dove Investments (P) Ltd. And Others Vs. Gujrat Industrial Investment Corporation and Another³ and Sharif-Ud-Din Vs. Abdul Gani Lone⁴.

12) Two, Mr. Vidyarthi would urge that doctrine of “substantial compliance” governs the situation like the case at hand. If a party is shown to have done all that was possible and within its control and, yet, there is a minor infraction of the prescription, the doctrine of substantial compliance insulates a party of the consequences which an innocuous breach would attract.

13) In opposition to this Mr. Saurabh Patil submitted that default on the part of the petitioners to furnish the documents was deliberate and with an oblique motive; to suppress the misdemeanour in the management of the affairs of the Society. Mr. Patil laid emphasis on the fact that an unintended consequence of the orders passed by the authorities below under Section 154B-23 (1) (iii) and (3) of the Act, 1960, qua the Respondent No.3 was the disqualification of the respondent No. 3 himself, for being a member of the Managing Committee. Mr. Patil would urge that the petitioners never furnished the documents sought by the respondent No. 3 and took a patently false stand that the documents were furnished on 22nd October, 2019, much before the application submitted by the respondent No. 3 dated 24th October,

3 (2006) 2 SCC 619

4 (1980) 1 SCC 403

2019. This false stand singularly dismantles the professed claim of bona fide, urged Mr. Patil.

14) Mr. Patil submitted that on a plain reading of the provisions contained in Section 154B-8 and 23 an inference becomes inescapable that the deliberate failure to furnish the copies of the documents enumerated in Sub Section (1) of Section 154B-8 warrants disqualification. The legislature has provided such disqualification in order to promote transparency in the management of the affairs of the Housing Societies. If the time limit of 45 days is construed as directory, the very object of enacting the said provision would be defeated.

15) To begin with, it may be necessary to extract the provisions contained in Section 154B-8 and 23. They read as under:-

Section 154B-8. Rights of Members to inspect the documents

(1) Every Member of a society shall be entitled to inspect, free of cost, at the society's office during office hours, or any time fixed for the purpose by the society, a copy of the Act, the rule and the bye-laws, the last audited annual balance sheet, the profit and loss account, a list of the members of the Committee, a register of members, the minutes of general meetings, minutes of Committee meetings and those portions of the books and records in which his transactions with the society have been recorded.

(2) A society shall furnish to a Member, on request in writing and on payment of such fees at such rate as may be decided by the Registrar, from time to time, the copies of

any documents mentioned in the foregoing sub-Section within forty five days from the date of payment of such fees and when the Society is assisted by the Government in the form of share capital, loan and land, the said Society shall furnish such information within thirty days from the date so requested by a member.

Section 154B-23. 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 a Member of the Committee, no person shall be eligible to be appointed, nominated, elected, co-opted for being a Member of Committee, -

- i) if he is a defaulter of any society, or
- ii) if he carries on business of letting, subletting and selling flats in the housing society of which he is a Member, or
- iii) if he has been held responsible under section 79, 88, 154B-8 (2) or 154B-27 or for payment of cost of enquiry under Section 85, or
- iv) if he has incurred any disqualification under this Act or the rules made thereunder, or
- v) if he incurs any of the disqualification similar to that mentioned in the provisions of clause (vii), (viii) or (ix) of clause (f) of sub Section (1) of Section 73CA.

(2) A Member, who has incurred any disqualification under sub-section (1), shall cease to be a Member of Committee and his seat shall thereupon be deemed to be vacant.

(3) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification

under clause (ii), (iii), (iv) or (v) of sub-section (1) shall not be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee for five years from the date on which he or she has so ceased to be a Member of the Committee.

(4) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification other than disqualifications, referred to in sub-section (3), shall unless otherwise specifically provided in this Act, be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee as soon as such disqualification ceases to exist”.

16) The provisions contained in Section 154B-8 (2), which cast an obligation on the Society to furnish documents enumerated in sub-Section (1) within 45 days or 30 days, as the case may be, are required to be appreciated in the context of the nature of the documents. The Society is enjoined to furnish copy of the Act, Rules and the bye-laws, last audited balance-sheet, profit and loss account, list of the members of the committee, the register of members, the minutes of the general meetings, minutes of the committee meetings and the portions of the book and records relevant to the member. Evidently, these documents are of such a nature which every society is expected to be in custody of. The last audited balance-sheet, profit and loss account, list of members of the committee, register of members and the minutes of general meeting and committee meetings constitute the core of the record which the Society is enjoined to maintain under the provisions of the Act, 1960 and the Rules, 1961.

17) The prescription of time limit under sub-section (2) of Section 154B-8 is required to be considered through the prism of the basic nature of the documents. Ordinarily, the society would not be required to invest time and energy in retrieving the aforesaid documents as they are expected to be maintained at all the times by the Society.

18) Once the aforesaid nature of the obligation cast on the society is appreciated, the object of the prescription of time limit under sub-Section (2), with the pain of disqualification under Section 154B-23 (1) (iii) becomes discernible. While conferring a right upon a member of the society to get the copies of the aforesaid record of the society, a duty is cast on the latter to furnish the same to promote transparency and efficient management of the affairs of the society. To ensure that a member is not deprived of the access to the basic record and also avert the management of the affairs of the society in breach of the provisions of the Act, 1960 and the Rules, 1961 and the bye-laws, the duty is sought to be enforced by prescribing a penalty of disqualification of the members of the committee, in the event of default in furnishing the copies of those documents.

19) Section 154B-23 (1) (iii) visits the consequences of disqualification qua the member of the committee who has been held responsible under the specified Section 154B-8 (2). The legislature considered it appropriate to remedy the malady by providing for disqualification in case of specified

defaults where no other provision in relation to disqualification to be a member of the committee is made under the Act and the Rules.

20) Mr. Vidarthi, learned Counsel for the Petitioners endeavoured to draw home the point that the prescription as to the time limit under Section 154B-8 (2) cannot be construed rigidly for the mere use of the expression 'shall'. Time limit must be considered to be directory, lest it would erode the democratic and co-operative principles.

21) It is well recognized that the mere use of the word 'shall' is not of decisive significance to cloth mandatory character to a provision. To decipher the character of a provision, both text and context of the relevant provision deserve to be noted. The Court has to ascertain the legislative object and the consequences which the legislature has prescribed in the event of breach. The principles which govern the determination of mandatory or directory character of a provision are well-recognized.

22) A profitable reference in this context can be made to a three judge Bench decision of the Supreme Court in the case of **State of Mysore and Ors. V/s. V.K.Kangan and Ors.**⁵ wherein the Supreme Court expounded the test to be applied to determine the character of the provision, as under :

“10. In determining the question whether a provision is mandatory or directory, one must look into the subject-matter and consider the importance of the provision disregarded and the relation of that provision to be general object intended to be secured.

5(1976) 2 SCC 895

No doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview. But it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of a law-maker. And that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other.....”

(emphasis supplied)

23) In the case of **Sharif-ud-din V/s. Abdul Gani Lone (supra)** on which reliance was placed by Mr. Vidyarthi, broad proposition regarding rules of construction to be followed in determining whether a provision is directory or mandatory, were summarised as under :

“9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard

of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

(Emphasis supplied)

24) In the case of **P.T.Rajan V/s. T.P.Msahir and Ors.**⁶ the principles to determine as to whether a statute is mandatory or directory were reiterated :

“45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words “shall” or “may”. Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.

48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time

⁶ (2003) 8 SCC 498

prescribed therefor, the same would be directory and not mandatory (see Shiveshwar Prasad Sinha V/s. District Magistrate of Monghyr⁷; Nomita Chowdhary V/s. State of W.B.⁸ and Garbari Union Co-op. Agricultural Credit Society Ltd. V/s. Swapan Kumar Jana⁹

49. Furthermore, a provision in a statute which is procedural in nature although employs the word “shall” may not be held to be mandatory if thereby no prejudice is caused (See Raza Buland Sugar Co. Ltd. V/s. Municipal Board, Rampur¹⁰, State Bank of Patiala V/s. S.K.Sharma¹¹, Venkataswamappa V/s. Special Dy. Commr. (Revenue)¹² and Rai Vimal Krishna V/s. State of Bihar¹³).

25) The aforesaid pronouncement was followed by the Supreme Court in the case of Dove Investments (P) Ltd. And Others Vs. Gujrat Industrial Investment Corporation and Another (supra), on which a strong reliance was placed by Mr. Vidyarthi. Paragraph No.13 in the said case reads as under :

“13. Whether a statute would be directory or mandatory will depend upon the scheme thereof. Ordinarily a procedural provision would not be mandatory even if the word “shall” is employed therein unless a prejudice is caused (see P.T.Rajan V/s. T.P.M.Sahir (supra)).”

26) Banking heavily upon the aforesaid enunciation, Mr. Vidyarthi submitted that the provision contained in Section 154B-8 (2) of the Act, 1960

7 AIR 1966 Pat 144

8 1999 2 Cal LJ 21

9 (1997) 1 CHN 189

10 AIR 1965 SC 895

11(1996) 3 SCC 364

12 (1997) 9 SCC 128

13 (2003) 6 SCC 401

being procedural in nature, despite use of the expression “shall” must be construed to be directory as no prejudice can be said to have been caused to the Respondent No.3 since he was a privy to the affairs of the society, being himself a member of the managing committee.

27) The legislative object discernible in obligating the society to furnish the copies of the documents, as noted above, cannot be lost sight of. The legislature has in addition to employing the word “shall” prescribed the consequence of disqualification for non-compliance of the mandate contained in Section 154B-8 (2) of the Act. The prescription of the penalty of disqualification to continue to be a member of the committee after a person has been held responsible for the default and also ineligible for being elected, co-opted or nominated as a member of the committee for five years, underscores the anxiety of the legislature in ensuring the enforcement of the duty cast on the society. There is nothing in the context or intention to draw an inference contrary to the imperative nature of the prescription, especially as regards the obligation to furnish copies of the documents.

28) The aspect of imperativeness of the time limit cannot be determined *de hors* the context. In a deserving case, where the disqualification is ordered for failure to observe the time limit of 45 days strictly, the mandatory character of the time limit may be justifiably delved into. Moreover, the fact that immediately after the expiry of the period stipulated for the supply of documents under Section 154B-8(2), disqualification is not automatic, cannot

be lost sight of. The disqualification is incurred only when the Registrar fastens liability on the member of the committee for default in supply of the copies under Section 154B-8 (2) of the Act, 1960. Inevitably, the inquiry is warranted and required to be held (as in the instant case). That provides an opportunity to the defaulting society and Committee members to demonstrate that the default was neither intentional nor there was lack of bona fide. Undoubtedly, the expression “without any reasonable or justifiable cause” does not find place either in Sections 154B-8 or 154B-23. Yet, while fastening the responsibility for the default so as to entail the consequence of disqualification, that aspect ought to enter determination by the Registrar.

29) Mr. Vidyarthi was justified in canvassing a submission that if substantial compliance in conformity with the provisions of Section 154B-8 (2) is ensured, the provision of disqualification in Section 154B-23(1) would be required to be construed in a manner which advances the legislative object and promotes democratic and co-operative spirit.

30) The Supreme Court enunciated the doctrine of ‘substantial compliance’ in the case of Commissioner of Central Excise, New Delhi V/s. Hari Chand Shri Gopal and Ors.¹⁴ in the following words :

“32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be

described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.”

31) Even where a provision is couched in a mandatory form if it could be shown that a party has done all that, which was within its powers, non-compliance may not result in an irretrievable hardship as the party has, in essence, ensured substantial compliance. In such an eventuality, where the court is satisfied that a party has made a substantial compliance in furtherance of the legislative object, the Court may relieve a party of the hardship which a minor or technical infraction would otherwise entail.

32) The pivotal question, in the case at hand, is whether the Petitioners and the other committee members had ensured substantial compliance. The authorities below have held that the requisitioned documents were not furnished by the Society within the stipulated period. Mr. Vidyarthi attempted

to salvage the position by canvassing a submission that the DDR observed that the Society had made bonafide efforts to furnish copies to the Respondent No.3, but not within the prescribed period of 45 days.

33) The response of the society in the wake of the requisition by Respondent No.3 and the notice of Deputy Registrar provides a legitimate answer. It is pertinent to note that the copies of the minutes of the special general body meeting, annual general meeting, monthly meetings of the committee squarely fall within the ambit of the provisions contained in Section 154B-8(1) of the Act, 1960. It is indisputable that the Respondent No.3 had requisitioned the aforesaid documents along with other documents on 24 October 2019. The communication dated 29 November 2019 acknowledges the fact that the said communication was received by email on 24 October 2019 and physically on 5 November 2019.

34) The said communication dated 29 November 2019 belies the claim of the society that the documents were furnished or sought to be delivered at the flats of Respondent No.3, in the Society. On the contrary, it contains a categorical statement that once required documents were finalized, the Society would let Respondent No.3 know. The case of the Society and the Petitioners that the requisitioned documents were furnished on 22 October 2019 is thoroughly demolished by the said communication dated 29 November 2019.

35) The response of the society to the notice dated 5 March 2020 addressed by the DDR makes the position abundantly clear. In the reply dated

12 March 2020, an endeavour was made to claim that the requisite documents were sent by post on 22 October 2019 at the address of Respondent No.3 in the society. The aforesaid claim, as noted above, was demonstrably untrue. The application for the copies of the documents itself was received on 24 October 2019 and, hence, the documents could not have been supplied on 22 October 2019 in any case.

36) What follows is also of salience. With regard to the documents requisitioned by Respondent No.3, it was contended that the Society had already appointed a Counsel before the Divisional Joint Registrar and all the documents were made available to its Counsel. These two communications militate against the case subsequently sought to be developed that the Society had either already furnished the documents or for want of availability of the Respondent No.3 at the flats, in the society, the documents could not be furnished.

37) I deem it superfluous to delve into the factual dispute as to whether the documents were indeed furnished after a formal show cause notice was issued to the Society under Section 154B-23 (1) (iii) of the Act, 1960. The time-line is of critical significance. In view of the provisions contained in Section 154B-8 (2) of the Act, the Society was enjoined to furnish documents latest by second week of December 2019. The material on record shows that despite notice by the Deputy Registrar on 5 March 2020, the Society did not furnish the documents. On the contrary, an evidently untrue stand that the documents

were sent by post on 22 October 2019 was taken. Even on that day i.e. on 12 March 2020, the Society did not show willingness to furnish the documents.

38) In the aforesaid view of the matter, I find it rather difficult to accede to the submission of Mr. Vidyarthi that there was substantial compliance. On the contrary, the situation which thus emerges is that, even after a considerable time, beyond 45 days had elapsed, despite opportunity, the Society did not furnish the specified documents to the Respondent No.3. In such a fact situation, drawing an inference of substantial compliance, would defeat the provisions of the Act, 1960.

39) The submission on behalf of the Petitioners that the Respondent No.3 was a privy to the affairs of the Society and had pursued the matter with an oblique motive does not advance the cause of the Petitioners. Being a committee member does not denude the Respondent No.3 of his rights as a member of the Society. I find substance in the submission of Mr. Patil that by pursuing the instant proceedings, the Respondent No.3 unintendedly invited the consequence of his own disqualification and, thus, bonafide of Respondent No.3 cannot be questioned.

40) The upshot of aforesaid consideration is that the impugned order does not warrant any interference in exercise of extra ordinary writ jurisdiction.

41) Hence, the following order :

-.:ORDER:-

- i) The petition stands dismissed.

- ii) Rule stands discharged.
- iii) No costs.

[N. J. JAMADAR, J.]