

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

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 8801 OF 2022**

Shree Shantiniketan 'C', Co-op.Hsg. Soc.Ltd. & Ors. ..Petitioners  
Vs.  
The State of Maharashtra & Ors. ...Respondents

Mr.Vaibhav V. Ugle, for the Petitioners.

Ms. V. S. Nimbalkar, AGP for the State- Respondent .

**CORAM : G.S. KULKARNI, J.**  
**DATE : JANUARY 16, 2023**

**P.C.:**

1. Not on board taken on board on a praecipe as moved on behalf of the petitioners.
2. Heard learned Counsel for the petitioners and the learned AGP for the respondent-State. Respondent No.4 although served, is not represented.
3. Heard finally by consent of the appearing parties.
4. The order impugned in this petition is an order dated 31 May 2022 passed by the Assistant Registrar, Co-operative Societies, CIDCO, Navi Mumbai, whereby in exercise of powers vested in him under Section 78A of the Maharashtra Co-operative Societies Act,1960 (for short '**the Act**'), the managing committee of the petitioner-society has been superseded and an administrator has been appointed. The

challenge to the said order is primarily on two grounds, firstly there is no consultation with the federal society in terms of Second proviso to Section 78A; and secondly, that Section 78A itself would not be applicable to the petitioner-society as it is a housing society the provisions of the fourth proviso to Section 78A clearly ordains that nothing in Section 78A (1) shall apply to a society, in which there is no Government Shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government. The contention of the petitioner is that there is no financial assistance or shareholding of the Government or any guarantee by the Government, in the society.

5. The respondents have filed a reply affidavit. In the reply affidavit it has been clearly stated that although a letter was forwarded for consultation of the federal society, no reply was received. Hence, there was no effective consultation with the federal society, nonetheless the impugned order came to be passed. Also there appears to be substance in the contention as urged on behalf of the petitioners that the fourth proviso to Section 78A(1) is applicable in the facts of the case, as there is no material on record to show that any Government aid or financial assistance in terms of any cash or kind or any guarantee as provided in the fourth proviso to Section 78A(1) was provided, hence the provisions of Section 78A were itself not applicable.

6. In the aforesaid circumstances, clearly the impugned order as passed by the authority, is without jurisdiction. It is in fact, passed contrary to the provisions of Section 78A. The petition, accordingly, would be required to be allowed. Hence, the following order:-

**ORDER**

- (i) The impugned order dated 31 May 2022 is quashed and set aside.
- (ii) It is however clarified that, if there are irregularities committed by the managing committee, in that event the respondent No.4 or any other member of the society is free to take recourse to such remedies as may be permissible in law. Also all contentions of the members of the managing committee in that regard are expressly kept open.
- (ii) The petition is accordingly allowed in the above terms.
- (iii) Disposed of in the above terms. No costs.

**[G.S. KULKARNI, J.]**