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

WRIT PETITION NO. 421 OF 2012

1) Blue Haven Co-op. Housing Society
Ltd.

having it's registered office at Blue
Haven, Plot No.14, Bhau Saheb Hire
Marg, Mumbai-400 006.

2) Nareshkumr K. Saraf,
Secretary of the Petitioner No.1 Society,
of Bombay Indian Inhabitant residing
at Blue Haven Co-op. Housing Society
Ltd. having it's address at Blue Haven,
Plot No.14, Bhau Saheb Hire Marg,
Mumbai-400 006.

... Petitioners

V/s.

1) The State of Maharashtra,
through the Secretary to the Government
of Maharashtra, Dept. of Cooperation,
Mantralaya, Mumbai-400 032.

2) The Divisional Joint Registrar, Co-op.
Societies, having his office at 6th floor,
Malhotra House, Fort, Mumbai-400001.

3) Deputy Registrar, Co-op. Societies,
'D' Ward, having his office at 6th floor,
Malhotra House, Fort, Mumbai- 400001

... Respondents

....
Mr. N. N. Bhadrashete a/w. Ms. Priyanka Bhadrashete for
petitioners.

Mr. Sukanta Karmakar, AGP for respondent nos. 1 to 3-state.

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CORAM : RAJESH S. PATIL, J.
RESERVED ON : 24th FEBRUARY 2023
RONOUNCED ON : 20th MARCH 2023

1. This Writ Petition is filed by a tenant co- partnership housing society, challenging concurrent findings of the impugned (i) judgment and order dated 30th April, 2011 passed by the Divisional Joint Registrar, Co-operative Societies, Division Mumbai and (ii) judgment and order dated 17th November, 2008 passed by the Deputy Registrar, Co-operative Societies “D” Ward, Mumbai; whereby the proposed amendments to the Bye-laws of Petitioner No.1 society was rejected.

FACTS

2. Petitioner No.1 housing society is registered on 29th March, 1963. Petitioner no.2 is the secretary of the Petitioner no.1

society. The said society was holding a free hold land on which the building “Blue Haven” was constructed through a developer. In all there are 66 members of this residential housing society. At the time of registration the Petitioner no.1 society approved and registered Bye-laws made by the promoter members.

3. On or about 16th January, 1989, the petitioner society adopted the Model Bye-laws. Relevant part of such Bye-laws under chapter VII, clause 17 (a) & (b) read as under :-

17. (a) An individual, who is competent to contract under the Indian Contract Act, 1872 and who resides or intends to settle down and reside in the area of operation of the society and who does not own a house, a plot or a flat in his name or in the name of any of the members of his family, in the area of operation of the society, or who owns it but gives an undertaking in the area of operation of the society, or who owns it but gives an undertaking under the Bye-law NO.19 (vi), may be eligible for membership of the society.

(b) A minor or a person of unsound mind, inheriting shares and/or interest of the deceased member in the capital/property of the society, may be eligible for admission to membership of the society through his guardian or legal representative on an application in the prescribed form, along with undertakings/declaration, in the prescribed forms, mentioned in the application.

4. On 19th September 2008, the members of Petitioner no.1 society held its Special General Body Meeting, and unanimously resolved, vide Resolution No.3 as under :-

- 1) the following clause may be added after clause (b) of the **Bye-law no.17** on page no.5 and numbered as clause (bb)

“(bb) Notwithstanding anything contained hereinabove, a person cannot be admitted as a Member of the society if he along with other existing members of the community to which they belong, constitute more than 5% of the total membership of the society.”

- 2) the following clause may be added after clause (viii) of the **Bye-law no.19** on page no.6 and numbered as clause (ix)

“(ix) He does not belong to a community, who including himself would constitute more than 5% of the total membership of the society”

5. The petitioner no.1 society thereafter following the procedure laid down under Section 13 of Maharashtra Co-operative Housing Society Act, 1960, read with Rule 12 of Maharashtra Co-operative Housing Society Rule, 1961, on 15th October, 2008 submitted a proposal to Deputy Registrar, Cooperative Society “D” Ward, Mumbai, praying for registration of the proposed

amendment so as to amend its **Bye-laws, Clause No.17 and Clause No.19.**

6. The Deputy Registrar, Co-operative Societies, however, after considering the proposal of the petitioner society, by its order dated 17th November, 2008 refused to approve the proposal of the petitioner society to amend its Bye-laws, clause no.17 and 19; on the grounds that the subject provisions are inconsistent with the provisions made in Section 22(1), 22(2) and 23 of the Maharashtra Co-op. Societies Act, 1960, and the proposed amendment is not in the interest of society.

7. Being dissatisfied by the judgment and order passed by the Deputy Registrar, Co-operative Societies, the petitioners filed an appeal, under Section 152 of the Act before the Divisional Joint Registrar, Co-operative Societies, Mumbai. The Divisional Joint Registrar, Co-operative Society, after hearing the parties by its judgment and order dated 30th April, 2011, confirmed the findings of the Deputy Registrar, Co-operative Societies, Mumbai, thereby rejecting the proposal of the petitioner society to amend its Bye-

laws. The Divisional Jt. Registrar concluded that the proposal submitted by the society is contrary to the provisions of Section 22(1), 22(2) and 23 of the Maharashtra Co-operatives Societies Act. The Co-operative Societies Act provides for open membership. The proposed amendment will divide the society on community basis. The building was not constructed on community basis therefore on inception there were no such Bye-laws of mathematical division of 5% per community. Therefore the Appeal was dismissed.

8. The Petitioner society being aggrieved by the concurrent finding of Co-operative Registrars, filed the present Writ Petition, challenging both the Orders. In the present Writ Petition by order dated 21st August, 2012 by consent '*Rule*' was issued, and the matter was posted for final hearing.

ARGUMENTS

9.1 Mr. N.N. Bhadrashete, the learned counsel for the petitioners, pointed out the unanimous resolution passed by the Petitioner no.1 society and also the impugned orders passed by the

Registrars. He further argued that the proposed amendment sought to amend the Bye-laws is for the benefit of all members since it is putting up a cap of 5% percent on every community, so that all the members can reside harmoniously in the society building, and there will not be domination by any particular community. The learned counsel for the petitioners further referred to sections 9, 13, 22 and 23 of the Maharashtra Co-op. Societies Act and Rule 8 and 12 of the Maharashtra Co-op. Societies Rules. Learned counsel for the petitioner argued that there is no provision to prohibit the society to amend its own Bye-laws. Rule 8 of the Maharashtra co-op. Societies Rules, authorizes cooperative societies to frame its Bye-laws. He added that the Bye-laws as proposed by the petitioner society are not at all contrary to the Maharashtra Co-operative Societies Act and the Rules framed therein. To buttress his submissions the learned counsel for the petitioners referred to three judgments viz. 1. *The Co-operative Central Bank Ltd & Others V/s. The Additional Industrial Tribunal, Andhra Pradesh & Others., reported in 1969 (2) SCC 43*. He laid emphasis on paragraph No.10 of the said judgment which reads as under:

10. We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the

Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in, the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the [Companies Act](#) and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the [Industrial Employment \(Standing Orders\) Act](#), 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by those Standing Orders, they do not have such force of law as to be binding on industrial Tribunals adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunals by the [Industrial Disputes Act](#) is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the [Co-operative Societies Act](#), so that the circumstance that, in granting relief on issue No. 1, the Tribunal will have to vary the special bye-laws framed by the Cooperative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under Section [61](#) of the Act.

[emphasis supplied]

Mr. Bhadrashete submitted that in sum and substance the Registrar has no power to dictate to the Co-operative Society as regards amending its Bye-laws. The

Co-operative Society itself has enough powers to frame its own Bye-laws; hence the amendments sought by the Petitioner No.1 society in the present matter should have been approved by the Registrar of the Co-operative Societies.

2. *Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune & Anr reported in 1989 Mh.LJ.* The Learned Counsel relied upon paragraph No.6 of the said judgment which is reproduce hereinbelow :-

6. In accordance with the directions issued by the State Government, the Registrar issued circular dated December. 5, 1985 directing all the housing society was called upon by letter dt. Feb. 3, 1986 to amend the bye-laws. The petitioner Society objected and thereupon the Registrar by letter dt. July 23, 1986 threatened to take action under [Section 14](#) of the Act , which enables the Registrar to compel the spcoetu to amend the bye-laws. Respondent 5, in the meanwhile, commenced construction work for raising a multi-storeyed building on the plot allotted to him and thereupon the society filed dispute u/s. 91 of the Act before the Co-operative Court, Poona. The society then realised that it would not be possible to resist the threat given by the Registrar to amend the bye-laws and thereupon instituted the present petition on Sept. 3, 1987 under [Art. 226](#) of the Constitution of India, and the reliefs sought are-

(a) declaration that the notification issued by the State Government on Jan. 19, 1985 and the circular issued by the Registrar of Co-operative Societies in pursuance thereof Co-operative Societies in pursuance thereof on Dec. 5, 1985 are null and void; and

(b) prohibiting the Registrar from registering the proposed society of respondents 5 and 6 in respect of the proposed building on plot No. 9 allotted to respondent .

The Learned Counsel thereafter submitted that the above judgment clarifies that powers of the Registrar

under Section 14 of the Maharashtra Societies Act can be used only if it is established that the amendment of the Bye-laws was desirable and was in the interest of society. The exercise of the power in the above case was clearly faulty. Therefore the Registrar was prohibited from forcing the society to register the proposed new society.

3. *Zoroastrian Cooperative Housing Socceity Ltd. & Another v/s. District Registrar, Cooperative Societies (Urban) & Others., reported in (2005) 5 SCC.* The Learned Counsel draw my attention to Paragraph Nos. 15, 18 and 22, which reads as under:

15. The cooperative movement, by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. No doubt, when it gets registered under the [Cooperative Societies Act](#), it is governed by the provisions of the [Cooperative Societies Act](#) and the Rules framed thereunder. [In Damyanti Naranga v. Union of India & Others](#) (AIR 1971 SC 966), this Court, discussing the scope of the right to form an association guaranteed by [Article 19\(1\)\(c\)](#) of the Constitution of India, stated that (SCC pp.684-85,para6)

[The right to form an association... necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntarily Association without any option being given to the members to keep them ou, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association.”

Based on this decision, it is contended on behalf of the Society that its members have the right to be associated only with those whom they consider eligible to be admitted and the right to deny admission to those with whom they do not want to associate, cannot be interfered with by the Registrar by imposing on

them a member who according to them was not eligible to be admitted. The argument on this basis is sought to be met on behalf of the respondents by reference to another decision of this Court in *Daman Singh and others, etc. v. State of Punjab and others, etc.* (AIR 1985 SC 973). Therein, their Lordships, after referring to *Damyanti (supra)*, held that that decision had no application to the situation before them. The position was explained in the following words:-

"That case has no application whatever to the situation before us. It was a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The composition of the society itself was transformed by the Act and the voluntary nature of the association of the members who formed the original society was totally destroyed. The Act was, therefore, struck down by the Court as contravening the fundamental right guaranteed by Art. 19(1)(f). In the cases before us we are concerned with co-operative societies which from the inception are governed by statute. They are created by statute, they are controlled by statute and so, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association."

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18. Section 4, on which reliance is placed, with particular reference to its proviso, only speaks of denial of registration if, in the opinion of the Registrar, the Society to be formed was economically unsound, or its registration may have an adverse effect upon any other Society, or it is opposed to, or its working is likely to be in contravention of public policy. Prima facie, it may have to be said that public policy, in the context of Section 4 of the Act, is the policy that is adopted by the concerned Act and the Rules framed thereunder. The concept of public policy in the context of the Cooperative Societies Act has to be looked for under the four corners of that Act and in the absence of any prohibition contained therein against the forming of a society for persons of Parsi origin, it could not be held that the confining of membership as was done by bye-law No.7, was opposed to public policy. When a statute is enacted, creating entities introduced thereunder on fulfillment of the conditions laid down therein, the public policy in relation to that statute has to be searched for within the four corners of that statute and when so searched for, one does not find anything in the Act which prevents the Society from refusing membership to a person who does not qualify in terms of bye-law No.7 of the Society.

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22.. The validity of a bye-law, that too an approved bye-law, has to be tested in

the light of the provisions of the Act and the rules governing co-operative societies. In so testing, the search should be to see whether a particular bye-law violates the mandate of any of the provisions of the Act or runs counter to any of its provisions or to any of the rules. [Section 24\(1\)](#) of the Act only provides for open membership subject to a person, aspiring to be a member, possessing the qualification prescribed by the bye-laws. It is not an open membership de hors the qualification prescribed by the bye-laws. When in *Daman Singh* this Court held that when a co-operative society is governed by the appropriate legislation it will be subject to the intervention made by the concerned legislation, it only meant that a legislative provision in the Act can be introduced for the purpose of eliminating a qualification for membership based on sex, religion or a persuasion or mode of life. But so long as there is no legislative intervention of that nature, it is not open to the court to coin a theory that a particular bye-law is not desirable and would be opposed to public policy as indicated by the Constitution. The Constitution no doubt provides that in any State action there shall be no discrimination based either on religion or on sex. But Part III of the Constitution has not interfered with the right of a citizen to enter into a contract for his own benefit and at the same time incurring a certain liability arising out of the contract. As observed by the High Court of Bombay in [Karvanagar Sahakari Griha Rachana Sanstha Maryadit and others vs. State](#) (AIR 1989 Bombay 392) the members have joined the society in accordance with the bye-laws and the members join a housing society by ascertaining what would be the environment in which they will reside. It is not permissible for the State Government to compel the society to amend its bye-laws as it would defeat the object of formation of the society. In that case, the society was constituted with the object of providing peaceful accommodation to its members. Though there may be circumstances justifying the State taking steps to meet shortage of accommodation, it was not open to the State Government to issue a direction to the Registrar of Co-operative Societies to direct a co-operative society to make requisite amendments to their bye-laws and grant permission to its members to raise multistoried constructions. In appeal from that decision reported as [State of Maharashtra and others vs. Karvanagar Sahakari Griha Rachana Sanstha Maryadit and others](#) (2000 (9) SCC 295) this Court while dismissing the appeal stated that it was clear that though a power was conferred on the Registrar to direct amendment of the bye-laws of a society, yet the paramount consideration is the interest of the society. So also, the power of the State Government to issue directions in public interest, could not be exercised so as to be prejudicial to the interest of the society. In the view of this Court, what was in the interest of the society was primarily for the society alone to decide and it was not for an outside agency to say. Where, however, the government or the Registrar exercised statutory powers to issue directions to amend the bye-laws, such directions should satisfy the requirement of the interest of the society. This makes it clear that the interest of the society is paramount and that interest would prevail so long as there is nothing in the Act or the Rules prohibiting the promotion of such interest. Going by *Chheoki Employees' Cooperative Society Ltd.*'s case, neither the member, respondent No.2, nor the aspirant to membership, respondent No.3 had the competence to challenge the validity of the bye-laws of the Society or to claim a right to membership in the Society.

[emphasis supplied]

The Learned Counsel eventually submitted that in view of the

law laid down by Hon'ble Supreme Court in the above judgment , the amendment proposed by the Petitioner Society could not have been termed as inconsistent to the provisions of the Maharashtra Co-op. societies act.

9.2 He further added that if the Bye-Law is amended it is in the larger interest of the society; so that no particular community will have majority and everybody would be at par community wise. He further added that both the impugned orders are not sustainable in law as they have not considered the legal provision. He also drew my attention to Rule 19 and 24. He pleaded that the petition should be allowed and the impugned order should be set aside.

10.1 The learned Asst. Government Pleader for the state opposed this petition and stated that the judgments of supreme court and of Bombay High Court referred by the petitioners are good in law, however, since the facts of present matter are quite different from the judgments cited the ratio laid down in these judgments are not applicable to the present petition. The Learned

A.G.P. further submitted that the judgments referred by the petitioner's counsel of Co-operative Central Bank (Supra) and Karvenagar (supra) pertains to provisions of Section 14 of the M.C.S.Act, which deals with the power of Registrar to direct societies to amend Bye-laws. The present matter deals with the issue of Society amending its Bye-laws under section 13. The learned A.G.P. further added that the judgment of in Zoroastrian Cooperative Housing Society Ltd. (supra) pertains to a restriction imposed that no new member be added to the Housing Society unless he/she is zoroastrian by caste. He further added that it is based on a single community and he further added that Paragraph No. 39 of the said judgment clarifies the petition.

10.2 Learned A.G.P. further added that if the resolution as proposed by the petitioners society is approved, any new person who is otherwise qualified to become a member may not be able to be a member only on the basis that he does not belong to a particular community, since the community to which he belongs has already the required 5% membership. He further added that in such a situation the member (vendor/seller), will not be able to sell

his flat at the market price prevailing at that particular time, and his sale will ultimately become a distress sale.

10.3 The learned A.G.P. then referred to section 21, which deals with who can become a member in a cooperative society. He further added that the proposed amendment was not part of the initial Bye-laws of the society, therefore, such an amendment has been fairly and equitably rejected by the Registrars.

10.3 Learned A.G.P. further argued that the challenge today in the present Writ Petition is to the impugned judgments and orders passed by the Registrars, and there is no challenge to the vires of section 22 of the Maharashtra co-operative societies act.

10.4 Learned A.G.P. submitted that proviso 1 to section 22 (1), covers the present case. He further drew my attention to the provision of section 23 and Rule 12 (5), and submitted that under Rule 12 sub rule (5) the Registrar should be satisfied to give approval to amend the Bye-laws. He further added that since the Registrar felt that the amendment is not as per the M.C.S. Act and

the Rules, the same is appropriately rejected by both the Registrars.

CONCLUSION

11.1 I have heard counsels for both the parties at length and have also gone through the judgements referred by them.

11.2 The petitioner society which was registered in the year 1963, had adopted its own Bye-laws at the time of its registration and thereafter in the year 1989 adopted Model Bye-laws. In the year 2008, the society by its Resolution passed the Special General Body Meeting and proposed to amend its Bye-laws by putting up a cap of 5% on membership of every community. Therefore, the society intended that the membership of any community should not be beyond 5% of the total membership of the society. The purpose of amending the Bye-laws is on the ground that there will not be domination by any particular community, in the society.

11.3 In this regard, it will be necessary to consider certain sections of Maharashtra Co-operative Societies Act, and the rules framed therein. Maharashtra Co-operative Societies Act, 1960, Chapter - III deals with the Members and their rights and liabilities.

Section 22, states as to a person who may become a member.

Section 22 reads as under:

“Person who may become member

(1) Subject to the provisions of section 24, no person shall be admitted as a member of society except the following, that is to say-

(a) an individual; who is competent to contract under the Indian Contract Act, 1872,

(b) a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the Societies Registration Act, 1860;

(c) a society registered, or deemed to be registered under this Act;

(d) the State Government or the Central Government;

(e) a local authority;

(f) a public trust registered under any law for the time being in force for the registration of such trusts :

Provided that, the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of students of a school or college:

Provided further that, subject to such terms and conditions as maybe laid down by the State Government by general or special order, a firm or company may be admitted as a member only of society which is a federal or urban society or which conducts or intends to conduct an industrial undertaking.

Provided also that, any firm or company, which is immediately before the commencement of this Act, a member of a society deemed to be registered under this Act, shall have, subject to the other provisions of this Act, the right to continue to be such

member on and after such commencement.

Explanation: For the purpose of this section an “urban society” means a society the business of which mainly falls within the limits of a municipal corporation, municipality, cantonment or notified area committee.

(1-A) Notwithstanding anything contained in sub section (1) the State Government may, having regard to the fact that the interest of any person or class of persons conflicts or likely to conflict with the objects of any society or class of persons conflicts or likely to conflict with the objects of any society or class of societies, by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment (as the case may be; and the question whether a person is or is not so engaged in or carrying on any profession business or employment or whether a person belongs or does not belong to such class of persons as declared under this sub section and has or has not incurred a disqualification under this sub section shall be decided by the Registrar under section 11.

(1-B) Notwithstanding anything contained in sub section (1) where the Registrar has decided under Section 11 that a person has incurred a disqualification under sub section (1-A), the Registrar or the person not below the rank of District Deputy Registrar of Cooperative Societies, authorized by him in this behalf, may, by order, remove such person from membership of the society; and such person shall cease to be a member of the society on expiration of a period of one month from the date of receipt of ;such order by him.

(2) Where a person Is refused admission as a member of society, the decision (with the reasons therefore) shall be communicated to that person within fifteen days of the date of the decision, or

within three months from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.”

11.4 There is no challenge to the vires of section 22 of the Maharashtra Co-operative Societies Act by the petitioners in this Writ Petition.

11.5 Section 22 (1) clearly mentions who can be qualified as a member. The society by proposed amendment to the Bye-laws wants to defeat the section itself, as it wants to insert a condition whereby even though a person who is otherwise qualified under section 22 (1) to be a member, cannot become a member if the proposed amendment to Bye-laws is allowed.

11.6 In The Maharashtra Co-operative Societies Act, 1960, Section 23 provides for open membership. Section 23 reads as under

“Open membership.— (1) No society shall, without sufficient

cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its Bye-laws.

(1-A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar. Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt: Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof:

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is

already registered as a member of any other such society, into the same zone or the area of operation.”

The only restriction as regards transfer of share or right or interest is stated in section 154 B - 7 of the Maharashtra Co-operative Societies Act, 1960.

Section 154 B-7 reads as under

*“Restriction on transfer of share or interest of a member
Subject to the provisions of this act, in case of a housing society, no transfer of share or interest of a member or the occupancy rights, except the transfer of his heir or a nominee, shall be effective unless-*

- a. the dues of housing society are paid in full*
- b. the transferee applies and acquires membership of the cooperative housing society in due course of time:*

Provided that, the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease, which are not inconsistent with the lease of the land of the housing co-operative housing society or with lease by the housing society to its members.”

11.7 Rule 12 sub rule (5) of Maharashtra Co-operative Societies Rules, 1961 read as under

“On receipt of a copy of the resolution and other particulars referred to in sub-rule (4), the Registrar shall examine the amendment proposed by the society and if he is satisfied that the amendment is not contrary to the Act or the rules and is in the interest of the society and co-operative movement, he may register the amendment and issue to the society a copy of the amendment certified by him under sub-section (2) of Section 13.

Where the Registrar is of opinion that the proposed amendment may be accepted subject to any modification, he may indicate to the society such modification after explaining in writing his reasons therefore.”

Therefore, the registrar needs to be satisfied to give approval to amend the Bye-laws. The Registrar concluded that the amendment is not as per the M.C.S. Act and the Rules, and hence rejected the proposed Bye-laws.

In my opinion, If the proposed amendment is approved, it will divide the society on community basis. The building was not constructed on community basis, on inception there were no such Bye-laws of mathematical division of 5% per community. Therefore, if the proposed amendment is approved, and in a situation where a member wants to sell his flat, and the community to which he belongs already has 5% membership out of 100%, in that situation he would have to search for a buyer of his community only. In such a situation, the sale is likely to be a distress sale. Therefore, the proposed amendment is not in the interest of the society.

11.8 The judgment of the Co-operative central Bank (Supra), referred by the Petitioner Society, involved an issue on industrial dispute which arose between 25 co-operative central banks and their workmen, which was referred to by Government of Andhra Pradesh to the Industrial tribunal for 3 issues, including the issue whether a dispute in respect of alteration of condition of service can be done by registrar acting under Co-operative societies Act. Therefore, the facts in that judgment were quite different and will not be applicable to the present matter.

11.9 In Karvenagar (Supra), it was the Registrar who gave directions under section 14 of the Maharashtra Co-operative Societies Act, 1960 to the housing society to change its Bye-laws. The said direction was set aside by the High court. In the present matter, the society is proposing to amend its Bye-laws under section 13 of the Cooperative Societies act. Hence the facts are distinguishable and thus not applicable to the present matter.

11.10 The third judgment referred by the petitioner of Zoroastrian Cooperative Housing Society Ltd. (Supra), the issue

involved in the Bye-laws was from the inception of the society. In the present matter Bye-laws on the inception were quite different and only in the year 2008, the petitioner society intended to amend the Bye-laws by amending the original Bye-laws of the society.

11.11 Hence I find no reason to interfere in writ jurisdiction into the concurrent findings recorded by both the Registrars . The proposed amendment to the Bye-laws of clause 17 and 19 has been rightly rejected, therefore, the present Writ petition is dismissed with costs.

(RAJESH S. PATIL, J.)