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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6862 OF 2022

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Prakash Ramesh Salgaonkar, legal heir
of Rajashree R. Salgaonkar ... Petitioner

V/s.

The State of Maharashtra, through
Principal Secretary, Department of
Co. & Textiles & Ors. ... Respondents

Mr. Pravin S. Tembhekar for the petitioner.

Mr. Sanjay D. Rayrikar, AGP for respondent Nos.1 to 3.

Mr. R.Y. Sirsikar for respondent No.4/MCGM.

Ms. Miloni for respondent No.5 (through V.C.)

CORAM : AMIT BORKAR, J.

DATED : JANUARY 2, 2024

PC.:

1. The petitioner/member of a cooperative housing society is challenging order passed by the revisional authority in exercise of power under Section 154 of the Maharashtra Cooperative Societies Act, 1960 ("MCS Act" for short) challenging legality and validity of the certificate issued under Section 101 of the MCS Act.

2. The housing society issued a bill against the petitioner seeking recovery of Rs.1,55,719/- towards dues required to be paid by the petitioner as per bye-laws. For the purpose of recovery of such bill, the society filed an application under Section 101 of

the MCS Act. The Assistant Registrar by order dated 23 April 2018 granted certificate in favour of the housing society.

3. The petitioner challenged the certificate under Section 154 of the MCS Act. The revisional authority by the impugned order rejected the revision application.

4. Learned advocate for the petitioner submitted that the general body of the housing society decided to redevelop the society. The process of redevelopment was undergoing when the bill in question was issued. According to the petitioner, the bill was for repair of the society. According to the petitioner, therefore, while the work of redevelopment was being carried on, the housing society could not have taken a decision to repair the society. Such a resolution on the face of it is illegal and unenforceable. The authority under Section 101 was, therefore, obliged to consider the validity of the resolution.

5. The law in relation to the scope of power under Section 101 of the MCS Act *vis-a-vis* Section 91 of the MCS Act is well settled. The validity of resolution passed by a housing society can be challenged only under Section 91 of the MCS Act by a member or a person claiming through member. In absence of challenge to such resolution under Section 91, the member of a cooperative society is bound by such resolution. Once such resolution is in force, the authority under Section 101 of the MCS Act has no power to adjudicate validity of the resolution passed by the cooperative society. In absence of challenge to the validity of resolution permitting the managing committee to carry out repairs,

no fault can be found with the exercise of power by the authorities below granting certificate under Section 101 of the MCS Act.

6. There is no merit in the writ petition. The writ petition stands dismissed. No costs.

7. It will always be open for the petitioner to approach the Cooperative Court challenging validity of resolution, if permissible in law.

8. The cooperative housing society is permitted to withdraw the amount deposited by the petitioner.

(AMIT BORKAR, J.)