

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

WRIT PETITION NO. 8109 OF 2024

5

1. Pawankumar Nandkishor Singh
Aged about : 47 years, occ : business
Adult Indian Inhabitant OF Mumbai.

Having Address AT :35/2 21,

10 Charkop Kandivali Ekta Nagar Chs Ltd.

Marve Charkop Link Road,

Mumbai – 400 067 Mo. 9022223256

Pawansinghhuf@gmail.com

....Petitioner

15 **Versus**

1. The State of Maharashtra
Through Govt. Pleader, Appellate Side,
PWD Building, High Court, Bombay

20

2. The Divisional Joint Registrar,
Cooperative Societies Mumbai Division
Malhotra House, 05th Floor, Opp. GPO
Fort, Mumbai – 400 001.

25 Through Govt. Pleader, Appellate Side
PWD Building, High Court, Bombay

3. The Deputy Registrar
Co-operative Societies Western Suburbs

30 Having address at MHADA Building
Room No.211, 01st floor, Bandra (East)
Mumbai – 400 051.

Through Govt. Pleader, Appellate Side
PWD Building, High Court, Bombay

35

4. Deepak Jagdish Tejale
an adult, Indian Inhabitant of Mumbai
having address at 20/163
Charkop Kandivali Ekta Nagar Chs Ltd.
- 5 Marve Charkop Link Road,
Mumbai – 400 067.
5. Ramachal Samarth Yadav
Adult Indian Inhabitant of Mumbai
- 10 Having address at 56/388,
Charkop Kandivali Ekta Nagar Chs Ltd.
Marve Charkop Link Road,
Mumbai - 400 067.
- 15 6. Charkop Kandivali Ekta Nagar
Co-operative Housing Society Limited
a society registered under the
provision of the Maharashtra Co-operative Societies
Act, 1960 and the Rules framed thereunder bearing
- 20 Registration No.BOM(WR) HSG (TO)/7568/93-94,
having office at Ekta Nagar Marve Road, Charkop
Link Road, Kandivali (West),
Mumbai 400 067.
-Respondents
- 25 -----
Mr. Swapnil Bangur a/w Mr. Hardik Jain i/b A. V. Jain Associates,
Advocate for the Petitioner.
Mr. A. B. Chate Add. G. P. a/w Mr. S. D. Rayrikar, AGP, Advocate for
the Respondent-State.
- 30 Dr. Uday Warunjikar a/w Mr. Saivaj Dable, Ms. Priyanka Dable, Mr.
Jenish Jain and Mr. Sumit Kate, Advocate for Respondent No.5.

CORAM : AVINASH G. GHAROTE, J.

35 **DATE : 13th JUNE, 2024.**

ORAL JUDGMENT :

1. Heard, Mr. Swapnil Bangur learned counsel for the
5 petitioner and Dr. Uday Warunjikar learned counsel for the
respondent No.5. Learned AGP appears for the respondents 1 to 3.
2. The petition questions the order dated 15.05.2023 passed
by the Deputy Registrar Co-operative Society MHADA/respondent
10 No.3, whereby, the petitioner has been disqualified as a member of
the Managing Committee of the respondent No.6/Society in exercise
of the powers under Section 154 B-23 of the Maharashtra Co-
operative Societies Act, 1960 (page 27) and the order dated
2/05/2024 (pg.34) in Revision Application No.251 of 2023 passed
15 by the Divisional Joint Registrar/respondent No.2 by which
challenge to the order dated 15/5/2023, has been turned down.
3. The facts leading to the present petition shorn of
unnecessary details are that the petitioner was elected as a member
20 to the Managing Committee of respondent No.6/Society. The
election of the petitioner was questioned by respondent Nos.4 and 5
by filing a complaint to respondent No.3 contending that the

petitioner was having more than two children and therefore, in light of the mandate of Section 154B-23 (v) of the MCS Act, he had incurred a disqualification and therefore was liable to be disqualified. This found favour with respondent No.3, on the ground, 5 that the petitioner had three children No.1-Ms. Mahima Pawan Singh born on 19.04.2001, No.2-Mr. Abhinav Pawan Singh born on 28.09.2009 and Mr. Prabhat Pawan Singh whose name was included in the Ration Card of the petitioner as his son. He also found that the petitioner had one more issue namely Ms. Janhvi born on 31.8.2007. 10 He thus rendered a finding that the petitioner was having more than two children and therefore, he was disqualified in view of the aforesaid provisions. The said order dated 15.5.2023 has been confirmed by the Divisional Joint Registrar/respondent No.2.

4. Mr. Swapnil Bangur, learned counsel for the petitioner by 15 relying upon the provisions of Section 154 B (1) of the MCS Act, submits that by virtue of the provisions of Section 154B-1 to B-31 were not made applicable to actions under Chapter XIII-B of the MCS Act and therefore, the respondent No.3 and Divisional Joint Registrar/respondent No.2 could not have held the petitioner to be 20 disqualified on the above ground. He further submits that Section

154B (2) excludes Section 73(CA) of the MCS, Act from its applicability to Chapter XIII-B of the MCS, Act on which ground also the findings of disqualification are misconceived. He therefore submits that on this ground the impugned orders are liable to be
5 quashed and set aside and the complaint filed by the respondent Nos.4 and 5 is liable to be rejected.

5. The impugned order is supported by the learned Counsel for the respondent No.5, by contending that Chapter XIII-B is a
10 provision inserted subsequent in point of time in the MCS Act and therefore, non mention of Sections 154B-1 to 154B-31, in Sec.154 B (1) of the MCS Act, would not have any effect and the arguments in this regard are misconceived. It is also contended that though, Section 154B (2) excludes the applicability of Section 73(CA), the
15 mandate of Section 154B-23 would be applicable in light of Clause (v) contained therein by which it has been rightly held that the petitioner has incurred disqualification. Learned AGP adopts the above arguments.

6. The relevant provisions of the MCS Act, which fall for consideration are as under :

154B. (1) The following provisions of this Act shall apply mutatis mutandis to the housing societies, namely :—

5 Section 1, clauses (5), (6), (7), (8), (10), (10-ai), (10-aii), (10-aiii), (13), (14), (16), (17), (18), (20-A), (21), (24), (26), (27), (28), (29), (29A) and (31) of section 2, sections 3, 3A, 4, 5, 7, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 20A, 21, 21A, 22, sub-sections (1), (2) and (3) of section 23, sections 25, 25A, 31, 33, 34, 35, 36, 37, 38, 40, 41, 10 42, except proviso of sub-section (1) of section 43, section 45 and sub-sections (1)(b), (2) and (3) of section 47, section 50, clauses (a) (c), (d) and (e) of section 62, sections 64, 65, 66, 67, 68, 69, 70, 71, 71A, 72, 73, sub-sections (2) to (7) of section 73ID, sections 73C, 73CB, 73CC, 73F, 73I, 75, 76, 77, 77A, 78A, sub-sections, (1), (1A), 15 (1B), (2), (3) and (4) of section 79, sections 79A, 79AA, 80, 81 to 89A, 91 to 100, 102 to 110, 145 to 148A, 149 to 154, **154A and 155 to 168.**

(2) The following provisions of this Act shall not apply to the housing societies, namely :—

20 Clauses (1)(a) and (b), (2)(a), (b) and (c), (4), (9), (10-aii-1), (10A), (11), (11-A), (12), (14-A), (15), (16-A), (19) (a), (a-1), (b) and (c), (19A), (22), (23) and (25) of section 2, sections 6, 8, 11, 16, 18A, 18B, 18C, 23(4), 24, 24A, 26, 27, 28, 29, 30, 32, 32A, 39, 44,

44A, 46, 47(1)(a), 47(4), 48, 48A, 49, 51, 52, 53, 54, 55, 56, 57, 58,
59, 60, 61, 62(b), 63, 69B, 72A, 73(1A)(b), 73A, 73AAA, 73-B, 73CA,
73D, sub-section (1) of section 73ID, sections 74, 78, 90, 101, 110A
and sections 111 to 144-1A.

5

154B-23. (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
10 Committee,—

(i) if he is a defaulter of any society, or

(ii) if he carries on business of letting, subletting and selling of
flats in the housing society of which he is a Member, or

15 (iii) if he has been held responsible under section 79, 88, 154 B-
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

20 (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-
5 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
10 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.

15 The relevant portion of Sec.73CA, with which we are concerned in this matter is 73CA(1) (i)(f)(vii) which reads as under :

[(vii) has more than two children :

Provided that, a person having more than two children on the
20 date of commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 2001 (hereinafter in this clause referred to as “ the date of such commencement ”), shall not be disqualified under this clause so long as the number of children he had on the

date of such commencement does not increase :

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

Explanation.—For the purposes of this clause,—

- (a) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity ;
- (b) “ child ” does not include an adopted child or children.]

7. What is material to note is that Chapter XIII-B has been inserted by MCS Amendment Act No.23 of 2019 with effect from 09.03.2019. It is therefore apparent, that Chapter XIII-B is a special provision enacted for the purpose of governing the affairs of Co-operative Housing Societies. It is for this reason, that Section 154B(1) of the MCS Act, does not contain any mention of Section 154B-1 to section 154B-31 as these are the very sections which have been introduced by the amendment, to govern the provisions of the Co-operative Housing Societies. Accepting the contention of learned counsel for the petitioner that non inclusion of the above provisions in section 154B(1) of the MCS, Act, would indicate that the same was

not applicable, would make the entire Chapter XIII-B redundant, as on account of such a plea they would become incapable of being resorted to, for the purposes of considering the affairs of the Co-operative Housing Societies, which is impermissible in law, considering the reason why chapter XIII-B has been enacted. The plea, in my considered opinion is thoroughly misconceived and is untenable in law.

8. Though, Section 154B (2) excludes Section 73(CA) which deals with disqualification of the member, from its applicability to Chapter XIII-B of the MCS Act, however, Section 154B-23 in Chapter XIII-B takes its place *vis-a-vis* the affairs of the Co-operative Housing Society and provides for disqualification of a Committee and its members on the ground as indicated in Clause (i) to (v) of sub-section (1), thereto. Clause (v) mandates that a member would incur disqualification similar to that mentioned in the provisions of Clause (vii), (viii) or (ix) of clause (f) of sub-section (1) of Section 73CA.

9. A perusal of Clause (v) of Sec.154 B-23 would indicate that the disqualification as contemplated by section 73CA (vii) on

account of Managing Committee member having more than two children has been also provided to be a ground of disqualification in respect of a member of the Managing Committee of a Co-operative Housing Society, by inserting the same in Sec.154 B-23 by way of
5 incorporation. Sec.154 B-23, is an independent provision, and operates independently and would mandate disqualification of a member if he has more than two children. That being position, the exercise of the power by the authorities below, considering the position as indicated above cannot be faulted with on account of
10 absence of jurisdiction.

10. The date of commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 2001 by which Clause (vii) was introduced in Sec.73CA (1)(f) is 7/9/2001, before which date the
15 petitioner already had a daughter Ms. Mahima Pawan Singh born on 19/4/2001, the position on record indicates that after the commencement date, the petitioner has had three children as indicated above.

20 11. Though, it was contended that Mst. Prabhat Pawan Singh

was not the child of the petitioner and was only brought to his residence for his studies, considering which I had asked learned counsel for the petitioner to supply the copy of the date of birth certificate of Mst. Prabhat Pawan Singh, he has expressed his
5 inability to do so, on account of which, I have no other option than to go with the findings recorded by the authorities below, which considers Mst. Prabhat Pawan Singh as the son of the petitioner, on account of his name being found in the Ration Card, which insertion is obviously at the behest of the petitioner. In light of the above
10 position, I do not see any ground made out for interfering in the impugned orders.

12. The petition is dismissed. No costs.

15 13. At this stage, learned counsel for the petitioner seeks extension of the order dated 06.06.2024, by which this Court had postponed the election to the post of Chairman of the respondent No.6-Society till 16.06.2024. The same is vehemently objected by learned counsel for the respondent No.5. Considering that the
20 election already stands postponed till 16.06.2024, by the order

dated 6/6/2024, passed by the learned Vacation Court, extension of that period for a further two weeks would not cause any prejudice to any of the parties, considering which the interim order dated 06.06.2024 is extended for a period of two weeks.

(AVINASH G. GHAROTE, J.)