



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15530 OF 2024

Praful R. Mehta and Ors.

... Petitioners.

Versus

The Divisional Joint Registrar,
Co-operative Societies, Mumbai and Ors.

... Respondents.

Mr. Bhavin Gada i/by Mr. V.S.Jadhav for the Petitioners.

Mr. Hamid D. Mulla, AGP for Respondent Nos.1 and 3-State.

Mr. Dinyar Madon, Senior Advocate a/w.Ms.Sachi Lodha i/by

Ms.Bhagyashree Dhamapurkar for Respondent No.2.

Mr. Bhushan Deshmukh i/by Mr. Sandesh Daptare for Respondent No.4.

Mr.Karl Tamboly a/w.Kevin Pereira i/by Mr.Chinmaya Acharya for Respondent No.5.

Coram : Sharmila U. Deshmukh, J.

Date : November 11, 2024

P. C. :

1. By the present Petition filed under Article 227 of the Constitution of India, the Petitioners, who are the members of Respondent No.4-Co-operative Housing Society, impugn the order dated 30th September, 2024 passed by the Divisional Joint Registrar in Revision Application No.625 of 2022, by which the Respondent No.1 had quashed the no objection given by the Assistant Registrar to the Respondent No.4-Society to proceed further for the redevelopment of the Society through the Respondent No.5-Developer.

2. The facts of the case are that the Respondent No.4-Society had appointed Respondent No.5 as developer for redevelopment of the Society by letter of appointment dated 14th August, 2022. The Co-operative Housing Society has been constructed prior to the year 1940 and is stated to be in urgent need of redevelopment. The Co-operative Housing Society consists of 62 units comprising of residential and non-residential premises. By letter dated 8th March, 2022, the Respondent No.4-Society had informed the Assistant Registrar that out of 62 members, 7 members have died and the legal heirs have not applied for transfer of the property and thus, the effective strength of the Society should be considered as 56 and not 62 for the sake of redevelopment under Section 79A of the Maharashtra Cooperative Societies Act, 1960 (short short, "**MCS Act**").

3. By letter of even date, the Respondent No.4-Society informed the Assistant Registrar that 3 members owned two flats and therefore as they will have only one voting right, the effective strength of the Society should be considered at 59. It appears that subsequently, one more member of the Respondent No.4-Society expired and there was no transfer application made by the legal heirs of any of the deceased-members.

4. In the Special General Body Meeting held on 3rd April, 2022, the Respondent No.4-Society unanimously decided to commence the redevelopment process in which the Respondent No.1 participated and did not object to the same. The minutes of the meeting reflect that the Respondent No.4-Society considered the number of members to be 56 in number. Subsequently, in a Special General Body Meeting held on 14th August, 2022 in the presence of the authorised officer appointed by the Respondent No.1, in which 39 members were present physically and 11 members were present through zoom, 28 votes were cast in favour of the Respondent No.5-Developer and the authorised officer declared the Respondent No.5 as selected by majority of 28 votes. While considering the votes cast, the members attending through zoom platform were not considered.

5. A letter of appointment dated 14th August, 2022 was issued to the Respondent No.5-Developer. On 18th October, 2022, the Assistant Registrar gave his no objection to the Respondent No.4-Society to take further steps in the redevelopment of the Society which was challenged by the Respondent No.2, who was one of the Managing Committee members before the Divisional Joint Registrar. 34 members of the Respondent No.4-Society intervened

in the said Revision Application and supported the appointment of the Respondent No.5-Developer. After hearing the parties, by order dated 29th December, 2022, the Respondent No.1 partly allowed the Revision Application and quashed and set aside the no objection granted by the Assistant Registrar vide letter dated 18th October, 2022 and directed the Assistant Registrar to initiate a fresh process by appointing another authorised officer for calling the Special General Body Meeting for redevelopment in accordance with the guidelines of Government Circular dated 4th July, 2019.

6. The order of 29th December, 2022 came to be challenged by the Respondent No.5-Developer as well as the present Petitioners before this Court by way of Writ Petition No.813 of 2023 and Writ Petition (L) No.8449 of 2024 respectively. Vide order dated 2nd September, 2024 passed in Writ Petition (L) No.8449 of 2024 filed by the Petitioners, the Revision Application was remanded to the Divisional Joint Registrar for the purpose of ascertaining whether the $\frac{2}{3}$ rd quorum was available and the criteria of 51% was met by considering the registers of members and list of members as on 14th August, 2022 which is mandated to be kept in Form "I" and "J". In the said order, liberty was given to the Petitioners to submit the additional affidavit to place on record any additional documents to

demonstrate that 7 members had expired. Paragraph 10 of the order dated 2nd September, 2024 directs the Divisional Joint Registrar to examine the record of the Society and thereafter ascertain the number of members and after the said exercise is carried out, if the quorum is met and the criteria of 51% is satisfied, the Divisional Joint Registrar was directed to withdraw the order of 29th December, 2022 and in event, the quorum is not met and the criteria of 51% is not satisfied then the order of 29th December, 2022 was to stand.

7. As per the liberty given, the Petitioners submitted an additional affidavit dated 5th September, 2024 and placed on record the death certificates of the members who had expired as on the date of the Special General Body Meeting held on 14th August, 2022 and the Respondent No.4-Society placed on record two Registers i.e. Form "I" and "J".

8. By the impugned order dated 30th September, 2024, the Divisional Joint Registrar quashed and set aside the letter of 18th October, 2022 and directed the Assistant Registrar to initiate fresh process for appointing another authorised officer for attending the Special General Body Meeting for redevelopment process of

Respondent No 4 Society.

Submissions:

9. Mr. Gada, Learned Counsel appearing for the Petitioners would submit that in accordance with the liberty given by this Court, the death certificates of the deceased 7 members were placed on record and despite thereof, the Respondent No.1 has considered the total strength of the members at 62 and has therefore, held that $\frac{2}{3}$ rd quorum was not fulfilled. He would submit that the minutes of the meeting of 3rd April, 2022 records that the Chairman of the Respondent No.4-Society had informed the general body that for calculating the strength of members, the members who have expired and the members who have double flats have to be excluded. He submits that in the said meeting Respondent No.2 was present and no objection was raised by her. He submits that in view of Section 25 of the MCS Act, membership ceases upon death of a member and cannot be counted for purpose of determining the quorum . He would further submit that under Section 25A of the MCS Act, the obligation is upon the Committee of the Society to update the registers by removing the names of persons who have ceased to be members.

He submits that the NOC issued by the Assistant Registrar on 18th October, 2022, records the proceedings of the meeting held in which the Chairman had informed the General Body that due to the death of 7 members the number of membership was 52 out of which 39 were present and thus the quorum was met.

10. Mr. Tamboly, learned counsel appearing for the Respondent No.5 would submit that in the case of ***Maya Developers vs. Nilam R. Thakkar [2016 SCC OnLine Bom 6947]***, the learned Single Judge of this Court has considered whether any directives under Section 79A prevails over the majority of members under Section 72 of MCS Act and had answered the same holding that the directives are directory and not mandatory.

11. *Per contra*, Mr. Madon, learned Senior Advocate appearing for the Respondent No.2 submits that by virtue of the death of the member, the membership does not come to an end as is sought to be canvassed. He draws attention of this Court to Section 30 and 33 of the MCS Act to contend that the provisions provides for a transfer of interest on death of the member and until the interest of the deceased member vests in the Society, there is no cessation of membership. He submits that Bye-laws 32, 34 and 35 of the

Model Bye-laws provides for the transfer of shares in the interest of the deceased members in the property of the Society to the heir who is then eligible to apply for membership of the Society. He submits that in view of these provisions, it cannot be said that for the purpose of deciding the quorum for the Special General Body Meeting, the membership of the deceased members, in respect of their respective flats in the Society would not be counted. He submits that this Court by order dated 2nd September, 2024 had remanded the matter only for the purpose of deciding whether the quorum has been met by examining the Register of members and list of members kept in Form "I" and "J". He submits that the Intervenor could not have placed on record the death certificates considering the limited remand by this Court. He further submits that under Section 25A of the MCS Act, if the Society does not comply with the requirement of the Section, the Registrar has powers to direct the Society to remove the name of such person and there is no application made to the Society as regards the deceased members and therefore, the membership as listed in Form "I" and "J" is required to be taken into consideration. He would submit that in response to the additional affidavit filed by the present Petitioners before the Divisional Joint Registrar, a

specific averment was made that for the first time the death certificates of the deceased members are put on record. He submits that under Section 38(2) of the MCS Act, the registers maintained under the provisions of the MCS Act are *prima facie*, evidence of the date on which any person was admitted to membership and as of the date on which he ceases to be a member and in the present case, by the impugned order, the Divisional Joint Registrar has rightly held that $\frac{2}{3}$ rd quorum was not fulfilled by taking into consideration the total number of members as 62 as per the Society's record.

12. Mr. Deshmukh, learned counsel for the Respondent-Society would submit that no death certificate has been produced before the Society and therefore, there cannot be said to be any reduction in the number of members of the Society below 62 members. He would further submit that even though it is stated that 3 members are owning double flats in fact one member is an associate member and therefore, the total number of members would be 59 members and $\frac{2}{3}$ rd would be 39 and $\frac{1}{3}$ rd and rounding it off the requirement would be 40 members. He submits that the requirement of the directives under Section 79A of MCS Act are required to be followed which has not been done.

13. I have given my thoughtful consideration to the submissions and have perused the records.

14. The remand to the Divisional Joint Registrar was for the purpose of conducting the exercise of determining the number of members of the Society on the date of the meeting i.e. 14th August, 2022 for the purpose of ascertaining the fulfillment of 2/3rd quorum. Though the order of remand directed the Divisional Joint Registrar to examine the record of the Society for the said purpose, the same was on the expectation that the records would be updated as mandated by law, and liberty was granted to the Petitioners to place material to demonstrate that seven members had expired. The purport of the liberty granted was to ensure that the mandate of law of requisite quorum is satisfied. Considering the liberty granted to the Petitioners, it cannot be said that the additional material could not have been looked into by the Divisional Joint Registrar and only the records of the Society was to be examined. Accepting such a submission would frustrate the whole purpose of remand, which was to ascertain the strength of members for determining the quorum as the dispute centered around the strength of members.

15. The Divisional Joint Registrar by the impugned order has

held the total number of members to be 62 and $\frac{2}{3}$ rd quorum to be of 41 members and as 39 members attended the Special General Body Meeting on 14th August, 2022 held that the quorum was not fulfilled. There is specific finding in the order of Divisional Joint Registrar of the factual position of death of seven members and 3 members holding two flats records resulting in the strength of members being positioned at 52. Despite holding so, the Divisional Joint Registrar has considered the Government Circular dated 4th July, 2019 providing for quorum of $\frac{2}{3}$ rd of the total members of the Society and held the number of members as per the records to be 62 in number.

16. The undisputed position is that as per the Form "I" and "J", there are 62 members out of which 7 members have expired and 3 members are holding double flats and the members holding double flats are entitled to single vote. Section 2(19)(a) of the MCS Act, defines the expression "member" as under:

(19)(a) "member" means a person joining in an application for the registration of a co-operative society which is subsequently registered, or a person duly admitted to membership of a society after registration, and includes a nominal, or associate member and any depositor or financial service user of primary agricultural co-operative credit society;

(a-1) "active member" means a member who participates in the affairs of the society and utilises the minimum level of services or products of that society as may be specified in the by-laws;

(b) "associate member" means a member who holds jointly a share of a society with others, but whose name does not stand first in the share certificate;

(c) "nominal member " means a person admitted to membership as such after registration in accordance with the by-laws;"

17. For a person to be considered as a member of the Society, the admission to the membership is a must. The admitted position is that none of the legal heirs of deceased members have applied or are admitted to the membership. The statutory position upon death of a member has been laid down in Section 25 of MCS Act which provides for cessation of membership upon death. Therefore in light of the admitted position of death of seven members, they ceased to remain as members of the Society. The non-updation of the Society records by the Managing Committee cannot take away the fact of reduction of membership upon the death of seven members. Absence of subsequent transfer of the interest of the members upon his death in accordance with the provisions of MCS Act cannot be construed as continuance of membership of automatic admission of legal heirs as members of the Society. The

mandate for the quorum is a percentage of members and not percentage of number of units of the Society and so construed the members who have expired are required to be excluded from the strength of the members. It is no answer to say that the records of the Society are conclusive proof of membership as provided under Section 38(2) of MCS Act in view of the admitted position of death of the members.

18. The contention of Mr.Madon that even after the death of the member, the provisions pertaining to the transfer of right, title and interest on the death of the person to the person nominated in accordance with the Rules means that there is no cessation of membership, overlooks Section 25 of MCS Act which is clear and specific. The provisions pertaining to the transfer of interest of the member is the procedure prescribed by law for purposes of transfer and cannot be construed as continuation of membership of the dead member. Unless and until the person is admitted to the membership of the Society, it cannot be said that the membership would continue for the reason that the property still exists. Reliance placed on the By-laws 34 and 35 of the Model By-laws is similarly misplaced.

19. As far as the 3 members who hold double flats one member are entitled to one vote and therefore, the strength of members is scaled down to 52 members. As per the directives under Section 79A of the MCS Act, 35 members constituted the quorum and the members physically present in the Special General Body Meeting were 39 in number and therefore, the quorum was met as also the requirement of 51% of the members present in the Special General Body Meeting and voting. The Divisional Joint Registrar though being conscious of the fact of death of members has failed to consider the strength of members accordingly.

20. Considering the decision of ***Maya Developers*** (supra), where this Court held that the directives dated 3rd January, 2009 issued under Section 79A of the MCS Act are recommendatory, the mathematical precision with which it is suggested that the 2/3rd quorum be construed, as one of the members was holding the second flat as associate member, is liable to be rejected.

21. The order of remand dated 2nd September, 2024 was clear that in event the quorum is met, the order of 29th December, 2022 is to be withdrawn by the Divisional Joint Registrar.

22. In light of the discussion above, as the total strength of members as on the date of holding the Special General Body

Meeting was 52 in number and $\frac{2}{3}^{\text{rd}}$ quorum was met, the order of 29th December, 2022 now stands quashed and set aside.

23. Resultantly, Petition succeeds. The impugned orders dated 30th September, 2024 and 29th December, 2022 are hereby quashed and set aside. Consequently, the NOC issued by the Assistant Registrar dated 18th December, 2022 stands revived.

[Sharmila U. Deshmukh, J.]