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

WRIT PETITION NO.1892 OF 2017

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Arun Dattatraya Kumbhar ... Petitioner

V/s.

Divisional Joint Registrar,
Coop. Societies, Kolhapur & Ors. ... Respondents

WITH

WRIT PETITION NO.2377 OF 2017

Abdul Sardar Sanadi & Ors. ... Petitioners

V/s.

Divisional Joint Registrar,
Coop. Societies, Kolhapur & Ors. ... Respondents

WITH

WRIT PETITION NO.3166 OF 2017

Ravsaheb Baburao Chougule & Anr. ... Petitioners

V/s.

Divisional Joint Registrar,
Coop. Societies, Kolhapur & Ors. ... Respondents

WITH

WRIT PETITION NO.1097 OF 2015

WITH

WRIT PETITION NO.1098 OF 2015

WITH

WRIT PETITION NO.1099 OF 2015

Shree Dudhganga Sahakari Pani
Purvatha Sanstha Maryadit ... Petitioner

V/s.

Divisional Joint Registrar,
Coop. Societies, Kolhapur & Ors. ... Respondents

Mr. Chetan Patil with Mr. Bhushan Jadhav for the petitioner in WP/1892/2017, 2377/2017 & 3166/2017 & for respondent Nos.3 to 6 in WP/1097/2015, 1098/2015 & 1099/2015.

Mr. Manoj A. Patil for the petitioner in WP/1097/2015, 1098/2015 & 1099/2015 & for respondent Nos.3 to 6 in WP/1892/2017, 2377/2017 & 3166/2017

Ms. Sulbha Chipade, AGP for respondent Nos.1 and 2 – State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 30, 2025

P.C.:

Writ Petition Nos.1892/2017, 2377/2027 & 3166/2017:

1. The challenge in these writ petitions, instituted under Articles 226 and 227 of the Constitution of India, is directed against the orders passed by the Competent Authorities under Sections 23(2) and 154 of the Maharashtra Cooperative Societies Act, 1960 (“MCS Act”), whereby the applications filed by the petitioners seeking membership in Respondent No.3 – Water Supply Society (“the Society”) were rejected. The crux of the dispute hinges on the interpretation of the Society’s bye-laws and the statutory mandate under the MCS Act.

2. The petitioners across all three writ petitions applied for membership in the Society, asserting compliance with the eligibility criteria prescribed under Bye-law. The Society, however, rejected their applications, contending that the membership of the petitioners’ father, a former member, had been lawfully transferred

to their paternal uncle under Section 30(2) of the MCS Act, thereby disentitling the petitioners to seek fresh membership. This rationale, grounded in purported succession principles, forms the nucleus of the controversy.

3. Aggrieved, the petitioners invoked the appellate jurisdiction under Section 23(2) of the MCS Act, which was dismissed by the Appellate Authority. In revision under Section 154 of the MCS Act, the Divisional Joint Registrar, while affirming the petitioners' contention that the Society's reasoning was extraneous to the statutory framework, paradoxically remanded the matter with liberty to file fresh applications. This revisionary order, though acknowledging the infirmity in the Society's decision, declined to grant substantive relief, thereby precipitating the present writ petitions.

4. Mr. Chetan Patil, learned counsel for the petitioners, vehemently argued that the revisional authority, having categorically held the Society's grounds for rejection as ultra vires the bye-laws and the MCS Act, erred in relegating the petitioners to a fresh application process. He submitted that statutory procedures, once initiated, must culminate in a definitive adjudication, barring remands on hyper-technicalities absent pleadings. It was emphasized that the Society, at no stage, contested the procedural validity of the applications under Bye-law, rendering the revisional authority's observation regarding improper form a misdirection in law.

5. Per contra, Mr. Manoj Patil, learned counsel for Respondent Nos.3–6, defended the impugned order, contending that the Society's adherence to its bye-laws and Section 22(2) of the MCS Act justified the rejection. He placed reliance on this Court's judgment dated 6th January 2023 in Writ Petition (St.) No.34177/2014, wherein a coordinate bench upheld the revisional authority's discretion to permit fresh applications to ensure procedural compliance. It was urged that the petitioners' failure to adhere to Form [A] prescribed under the Rules vitiated their claims, warranting no interference under Article 226.

6. Rival contentions necessitate a threefold analysis:

- (i) Whether the Society's rejection of membership, premised on succession to a third party, aligns with the bye-laws and the MCS Act;
- (ii) Whether the revisional authority's remand for fresh applications, despite quashing the Society's reasoning, suffers from jurisdictional error;
- (iii) Whether the petitioners' compliance with substantive eligibility criteria under the bye-laws entitles them to a mandamus for membership.

7. Adverting to the first issue, the Society's reliance on the transfer of membership to the petitioners' uncle is patently extraneous to the statutory scheme. Section 22(1) of the MCS Act and Bye-law mandate that membership eligibility hinges on the applicant's independent fulfillment of criteria—including landholding in the command area, residence, and payment of requisite fees. The Society's attempt to tether the petitioners'

eligibility to their father's membership, which stood transferred, constitutes a non sequitur and a blatant misapplication of Section 30 (pertaining to transfer of shares/interest).

8. On the second issue, the revisional authority's remand for fresh applications, despite holding the Society's grounds untenable, is legally unsustainable. Once the sole basis for rejection is nullified, and the petitioners' eligibility under Bye-law stands uncontroverted, the authority was bound to grant consequential relief under Section 154(3) of the MCS Act. The observation regarding defective form, absent any pleading or evidence from the Society, transgresses the principle of *audi alteram partem*. Judicial remand in such circumstances vitiates the statutory mandate of expeditious adjudication under the MCS Act.

9. Pertinently, the petitioners' applications, accompanied by proof of landholding, residence, and fee payment, conformed substantively to provision in the Byelaws. The revisional authority, thus, committed a jurisdictional error in *sua sponte* introducing unpleaded technicalities, undermining the petitioners' vested right to membership.

10. In the connected writ petition Nos.1097–1099/2015, the challenge to the conferment of membership upon Respondent No.3 is devoid of merit. The Appellate Authority, after scrutinizing Respondent No.3's landholding and compliance with Bye-law, rightly directed his admission. The Society's insistence on loan repayment as a precondition finds no sanction in the Act or bye-laws. A society cannot impose extraneous conditions beyond

statutory parameters. The concurrent findings of eligibility by the Appellate and Revisional Authorities, being factually and legally sound, warrant no interference under Article 227.

11. Writ Petitions Nos.1892, 2377, & 3166 of 2017: The revisional authority's order is quashed. The Society is directed to enroll the petitioners as members within four weeks. Rule made absolute in terms of prayer clause (a).

12. Writ Petitions Nos.1097–1099/2015: The concurrent findings warrant no interference. Petitions dismissed.

13. All writ petitions are disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)