

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5965 OF 2024

Bhavesh Premchand Kalia and Anr. **...Petitioners**

V/s.

The State of Maharashtra and Ors. **...Respondents**

Ms. Riddhi Shah *for the Petitioners.*

Ms. Savita Prabhune, *AGP for Respondent -State.*

CORAM: SANDEEP V. MARNE, J.

Dated: 21 April 2025.

P.C.:

1) This Petition challenges order dated 24 January 2023 passed by the Minister, Co-operation, rejecting second revision preferred by the Petitioners and order dated 15 February 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai. The Divisional Joint Registrar had dismissed first revision application filed by the Petitioners and had confirmed the disqualification order passed under Section 79(A)(3) of the Maharashtra Co-operative Societies Act, 1960 disqualifying the Petitioners from being member of managing committee of any society for a period of six years.

2) I have heard Ms. Shah the learned counsel appearing for the Petitioners and Ms. Prabhune, the learned AGP, appearing for the Respondent -State.

3) Respondent Nos. 4 to 9 were duly served with notices issued by this Court. However, they have failed to appear in the Petition and accordingly by order dated 11 December 2024, fresh notices for final disposal were directed to be issued. Respondent Nos.4 to 9 have been served by private notices. So far as court notices are concerned, Respondent No.8 has been served whereas notices in respect of Respondent Nos.4, 5, 6, 7 and 9 have been pasted on their residence. Despite pasting of notices, Respondent Nos.4, 5, 6, 7 and 9 have failed to put in their appearance before the Court. This is how Respondent Nos.4 to 9 have been served twice with court notice and once with private notice. It thus appears that Respondent Nos.4 to 9 are no longer interested in contesting the present Petition.

4) Perusal of the order passed by the Deputy Registrar, Co-operative Societies, on 29 July 2022 would indicate that the Deputy Registrar did not conduct a factual enquiry as to whether any additional amounts were indeed collected by the Petitioners as Chairman and Secretary of the Society towards transfer charges of flats. In their complaint, Respondent Nos.4 to 9 did not produce any concrete evidence of payment of any such transfer charges by the flat purchasers. Thus, there is no direct evidence of acceptance of transfer charges. True it is that some amounts are shown to have been received in the account of Vasant Sagar Cultural Affairs Committee. However, the said cultural committee is not being run exclusively by the society. It

is a committee of multiple societies in the complex. Petitioners are not office bearers of the said committee. Therefore, even if any voluntary payment is made to such cultural committee, it would be illogical to infer that collection of such charges in the account of cultural affairs committee were in fact the transfer charges for the flats. With a view to secure disqualification of an elected committee member, concrete evidence is required to be produced. Disqualification cannot be ordered merely on the basis of surmises and conjectures. In the present case, there appears to be complete absence of concrete evidence of acceptance of transfer charges by the Petitioners in their capacity as office bearers of managing committee of the society. Therefore, the order of disqualification passed against them is clearly unsustainable.

5) Some water has flown under the bridge during pendency of the present Petition. It appears that after dismissal of second revision application by Hon'ble Minister, an Administrator was appointed on the society, who conducted fresh elections and in May 2023, newly elected body taken over charge of the Society. Therefore, reinstatement of Petitioners as managing committee is now not possible. However, impugned order has the effect of disqualifying Petitioners from being managing committee members of any society for 6 years. This part of the impugned order therefore deserves to be set aside. Therefore, though this Court is not inclined to reinstate the

Petitioners as office bearers of the society, the effect of disqualification *qua* them deserves to be removed.

6) I accordingly, proceed to pass the following order:

- (i) Order dated 29 July 2022 passed by the Deputy Registrar as confirmed by the Divisional Joint Registrar by order dated 15 February 2024 and by the Hon'ble Minister on 24 January 2023, is set aside.
- (ii) However, setting aside disqualification of the Petitioners would not amount to their reinstatement as managing committee members.
- (iii) Disqualification ordered against them for a period of 6 years would stand set aside and Petitioners would be at liberty to participate in election process and co-option process of all societies, including Vasant Sagar Krushna Kaveri Co-op. Housing Society Ltd.

[SANDEEP V. MARNE, J.]