

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9435 OF 2024

Hilda Fernandes And Ors

... Petitioners

Versus

Bajrang Jadhav and Ors

... Respondents

Mr. Bhavin Gada i / b *Ms. Shruti Desai & Co. for the Petitioners.*

Mr. Milind Prabhune for Respondent Nos. 2 & 3.

Mr. P.G. Sawant, AGP for Respondent Nos. 4 & 5-State.

CORAM : SANDEEP V. MARNE, J.

DATE : 12 FEBRUARY 2025.

P.C. :

1) The Petition challenges order dated 22 May 2024 passed by the Divisional Joint Registrar dismissing Appeal No. 33 of 2024 filed by Respondent No. 6-Society and confirming the order dated 2 February 2024 passed by the Deputy Registrar, Co-operative Societies, H-West Division, Mumbai. By order dated 2 February 2024, the Deputy Registrar has appointed Authorized Officer for looking after day to day activities of the society under provisions of Section 77-A of the Maharashtra Co-operative Societies Act, 1960 **(the Act)**.

2) I have heard Mr. Gada, the learned counsel appearing for the Petitioner, Mr. Prabhune, the learned counsel appearing for Respondent Nos. 2 and 3 and Mr. Sawant, the learned AGP appearing for Respondent Nos. 4 and 5.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it appears that one of the main grounds on which the Deputy Registrar has proceeded to exercise jurisdiction under Section 77A of the Act is impermissibility for four members of the managing committee to form a quorum for taking a decision of co-opting of two members. Mr. Gada would submit that the society has only 11 members. He would invite my attention to the Government Resolution dated 3 January 2024 providing for minimum of quorum of only three members in respect of co-operative housing society with less than 35 members. Though the Deputy Registrar had the benefit of GR dated 3 January 2024 while passing the order dated 2 February 2024, the Deputy Registrar has proceeded to ignore the same and has blindly relied upon Model Bye-law No. 114, which does not make a provision for co-operative housing society with a less than 100 members. The Divisional Joint Registrar has failed to correct the error committed by the Deputy Registrar.

4) In my view the entire matter needs to be reconsidered in the light of GR dated 3 January 2024.

5) Accordingly the impugned orders passed by the Divisional Joint Registrar and Deputy Registrar are set aside and the proceedings are restored on the file on the Deputy Registrar for being decided afresh in the light of provisions of GR dated 3 January 2024. The Petitioners/Respondent No.6 – Society shall be entitled to rely upon such additional material as would be necessary to support their contentions.

6) Parties shall appear before the Deputy Registrar on 3 March 2025 and obtain further orders for conduct of hearing in the proceedings. Since the orders passed by the Divisional Joint Registrar and the Deputy Registrar are set aside, the Authorized Officer/Administrator shall stand discharged and he shall forthwith handover charge of the affairs of the society to the managing committee.

7) With the above directions, the Writ Petition is partly **allowed and disposed of.**

[SANDEEP V. MARNE, J.]

Note : This order is corrected vide order dated 13 February 2025.