

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

CIVIL WRIT PETITION NO. 10110 OF 2024

Henry James D'Souza & Ors.

..Petitioners

Versus

Dennis Fernandes & Ors.

..Respondents

Mr. Sanket Mungale for Petitioners.

Ms. Snehal S. Jadhav, AGP for State/ Respondent Nos.11 to 13.

CORAM : AMIT BORKAR, J.

DATE : 18 NOVEMBER 2025

PC :

1. The present challenge arises from an order passed by the Registrar under Section 75(5) of the Maharashtra Cooperative Societies Act. The order proceeds on the footing that the managing committee failed to appoint an auditor for the financial year 2022 to 2023. Based on this omission, the Assistant Registrar, by order dated 22 March 2024, disqualified the entire managing committee. He further appointed one Vijay Sawant as auditor. The law expects that such an order must show due application of mind to the gravity of the alleged lapse. It must also assess whether the lapse was deliberate or arose from circumstances beyond control. The impugned order reflects no such inquiry.

2. The managing committee approached the Revisional

Authority. The Revisional Authority treated the order under Section 75(5) as if it were an order under Section 77A. It therefore held that the Registrar ought to have published a notice as required under the proviso to Section 77(A-1). This approach does not reflect the statutory position. The record shows no order under Section 77A. When the original authority did not invoke Section 77A, the question of issuing notice under Section 77(A-1) does not arise. A revisional court must examine the legality of what is done, not reconstruct a jurisdiction that was never exercised. The error on this aspect has affected the decision of the Revisional Authority.

3. It also appears that the Assistant Registrar passed a sweeping order against the entire managing committee without assessing individual roles or responsibility. Such approach runs contrary to the principles laid down by this Court in *Kailash Maheshwari v. State of Maharashtra*, 2025 SCC OnLine Bom 3395. That judgment explains the contours of power under Section 75(5). It holds that the authority must apply a calibrated scrutiny. It must determine whether the omission is attributable to the committee as a whole or to specific members. It must also consider whether the lapse can be rectified without resorting to the extreme step of disqualification. These parameters were binding upon the authority. The impugned order does not disclose any consideration of these factors. The omission strikes at the root of the decision making process. The interest of justice therefore requires that the matter be remanded.

4. In view of these findings, the order dated 24 April 2024 passed by the Divisional Joint Registrar in Revision Application No. 110 of 2024 and the order dated 4 December 2023 passed by the Assistant Registrar cannot stand. Both orders are quashed and set aside.

5. The proceedings are restored to the file of the Assistant Registrar. He shall reconsider the matter afresh under Section 75(5) of the Act. He shall apply the principles laid down in *Kailash Maheshwari*. He shall record clear findings on the nature of the lapse, the extent of individual responsibility and the necessity of invoking the drastic power under Section 75(5).

6. The Assistant Registrar shall conclude the proceedings within three months from the date the parties appear before him.

7. The Assistant Registrar shall issue notice to Respondent Nos. 2 to 9. He shall ensure that the proceedings are completed within three months from their appearance.

8. The petition is disposed of.

(AMIT BORKAR, J.)