

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

WRIT PETITION NO.12266 OF 2024

Ramchandra Navlu Zore

... Petitioner

V/s.

State of Maharashtra and ors.

... Respondents

Mr. Manoj Phoolchand Jaiswal with Mr. Vaibhav Chaudhary and Mr. Vedant Gurav and Ms. Tanvi Deewan, Advocates for the Petitioner.

Mr. Santosh Musale with Mr. Saket R. Ketkar and Mr. Anthony Michael i/by Mr. Kunal Sunil Jadhav, Advocates for the Respondent.

Ms. Tanaya Goswami through V.C., Advocate for the Respondent No.3/SRA.

Ms. Aloka A. Nadkarni, AGP for the State.

CORAM : SANDEEP V. MARNE, J.

Dated : 31 January, 2025.

P.C. :

1. It appears that when the Petition came up for hearing before this Court on 27th September, 2024, submission was made on behalf of the Petitioner that the provisions of Section 73CA(1)(vii) of the Maharashtra Co-operative Societies Act, 1960 are not applicable to Co-operative Housing Societies in view of the provisions of Section 154B(2) of the Act. However, while making this misleading submission, it was not pointed out on behalf of the Petitioner to this Court that an independent provision in the form of Section 154B(23) has been inserted in the Act dealing with disqualification of Committee and its members. Thus, the position that it stands today is that the provisions of Section 73CA are not made applicable

to Co-operative Housing Societies and the issue of disqualification of the Committee members of the Co-operative Housing Society is now dealt with by an independent provision under Section 154B(23). Section 154B(23) provides thus :-

“154B-23. Disqualification of Committee and its Members

(1) Without prejudice to the other provisions of this Act or the rules made thereunder, in relation to the disqualification of being a Member of the Committee, no person shall be eligible to be appointed, nominated, elected, co-opted for being a Member of Committee,-

if he is a defaulter of any society, or

(ii) if he carries on business of letting, subletting and selling of flats in the housing society of which he is a Member, or

(iii) if he has been held responsible under section 79, 88, 154B-8(2) or 154B-27 or for payment of cost of enquiry under section 85, or

(iv) if he has incurred any disqualification under this Act or the rules made thereunder, or

(v) if he incurs any of the disqualification similar to that mentioned in the provisions of clause (vii), (viii) or (ix) of clause (f) of sub-section (1) of section 73CA.

(2) A Member, who has incurred any disqualification under sub-section (1), shall cease to be a Member of Committee and his seat shall thereupon be deemed to be vacant

(3) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification under clause (ii), (iii), (iv) or (v) of sub-section (1), shall not be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee for five years from the date on which he or she has so ceased to be a Member of the Committee.

(4) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification other than disqualifications, referred to in sub-section (3), shall, unless otherwise specifically provided in this Act, be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee as soon as such disqualification ceases to exist.”

2. Under clause (v) of Sub-section (1) of Section 154B(23), a member can be disqualified if he incurs any of the disqualifications, similar to that mentioned in the provisions of clauses 7, 8 and 9 of clause (F) of Sub-section (1) of Section 73A.

3. In that view of the matter, disqualification upon birth of third child would obviously apply even to a member of a Co-operative Housing Society.

4. The learned counsel for the Petitioner has sought to question the wisdom of the Legislature in enacting Sections 154B(23). However, the constitutional validity of Sections 154B(23) is not challenged in the present petition nor there is a prayer for striking down the said provision.

5. I, therefore, do not find any valid justification for entertaining the present petition. The petition merely challenges interim order passed by the Divisional Joint Registrar refusing to grant stay to the order passed by the Assistant Registrar. It would be for the Petitioner to continue to prosecute the Revision Application before the Divisional Joint Registrar.

6. Writ Petition is accordingly rejected.

(SANDEEP V. MARNE, J.)