

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

WRIT PETITION NO. 16335 OF 2024

Abdul Sattar (Shams) Sayed

... Petitioner

Versus

Divisional Joint Register Co.Op. Soc. And Ors

... Respondents

Mr. Atul Damle, Sr. Advocate i/b Khurram Agboatwala for the Petitioner.

Ms. Tanu Bhatia, AGP for Respondent-State.

Mr. Milind Prabhune, for Respondent No. 4.

CORAM : SANDEEP V. MARNE, J.

DATE : 11 MARCH 2025.

P.C. :

1) The Petition challenges order dated 11 June 2024 passed by the Divisional Joint Registrar allowing the Appeal No. 11 of 2023 filed by the contesting Respondents and setting aside order dated 1 December 2022 passed by Deputy Registrar. By his composite order dated 1 December 2022, the Deputy Registrar had disqualified the contesting Respondents from being members of the Managing Committee for the period of 5 years under provisions of Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) as well as had appointed an Authorized Officer under provisions of Section 77A of the Act to manage the affairs of the society.

2) I have heard Mr. Damle, the learned Senior Advocate appearing for the Petitioner and Mr. Prabhune, the learned counsel appearing on behalf of Respondent No.4. Considering the nature of order that is proposed passed in the present Petition, it is not considered necessary to serve notices on Respondent Nos. 5 to 8.

3) It appears that the Deputy Registrar proceeded to disqualify Respondent Nos. 5 to 8 from being members of Managing Committee under provisions of Section 75(2) and (4) of the MCS Act primarily because they failed to place before the general body, rectification report in respect of the concerned years. For this violation on the part of Respondent Nos. 5 to 8, the Deputy Registrar proceeded to disqualify them for maximum permissible period specified under Section 75(5), ignoring the fact that in every case the disqualification need not be for period of five years. The Deputy Registrar passed a composite order under Section 75(5) as well as 77A by which he proceeded to appoint an Authorized Officer to look after day to day affairs of the society. While Appeal is maintainable under Section 152 of the Act against orders passed under Section 77A of the Act, a revision is maintainable under Section 154 of the Act against an order of disqualification order passed under provisions of Section 75(5) of the Act. It appears that the Respondent No.5 to 8 preferred Appeal before the Divisional Joint Registrar instead of adopting two separate remedies of Appeal and Revision. Considering the unique facts and circumstances of the present case, I am not inclined to interfere in the impugned order dated 11 June 2024 only because of technical reason of failure to file revision against part of order dated 1 December 2022, which disqualified Respondent Nos. 5 to 8 under provisions of Section 75(5) of the Act.

4) Perusal of the order passed by the Divisional Joint Registrar would indicate that he has concentrated only against part of order dated 1 December 2022 passed under provisions of Section 77A of the Act, which appointed Authorized Officer and proceeded to set aside the entire order dated 1 December 2022 on the ground of failure on the part of the Deputy Registrar to publish a notice on the notice board at the head office of the society inviting objections and suggestions as per the first proviso to Section 77A of the Act. Perusal of the order passed by the Divisional Joint Registrar would indicate that he has not gone into the correctness of order passed by the Deputy Registrar disqualifying Respondent Nos. 5 to 8 under provisions of Section 75(5) of the Act. To that extent, it may well be argued that the order passed by the Divisional Joint Registrar is erroneous.

5) However, in the present case, much water has flown after passing of the order dated 1 December 2022. The Authorized Officer took charge of the affairs of the society and conducted elections to the Managing Committee of the society. The new Managing Committee has taken over and apparently Respondent Nos. 5 to 8 are not re-elected in the fresh Managing Committee. Though Mr. Damle would seek to suggest that associate members of Respondent Nos. 5 to 8 have been elected to the Managing Committee, it must also be noticed that the order of disqualification under provisions of Section 75(5) need not be period of five years in every case. The Deputy Registrar ought to have considered the gravity of misconduct alleged and proved against Respondent Nos. 5 to 8 and ought to have accordingly decided the period of disqualification. Considering the nature of misconduct alleged against Respondent Nos. 5 to 8, their disqualification for a period of

five long years was otherwise not warranted. Considering the fact that period of more than two years has elapsed from the date of passing of the order of disqualification as well as the fact that new Managing Committee has taken over, I am not inclined to exercise my jurisdiction under Article 227 of the Constitution of India to interfere in the order passed by the Divisional Joint Registrar. It is well settled law that the jurisdiction of High Court under Article 227 of the Constitution of India is corrective in nature and every error of law or fact need not be corrected so long as the final conclusion is justified. In that view of the matter, no case is made out for interference in the impugned order. Writ Petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]