

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17945 OF 2024

Sheetal Ketan Shah And Ors.

...*Petitioners*

V/s.

Divisional Joint Registrar, Co-Operative
Societies, Mumbai And Ors.

...*Respondents*

Mr. M. P. Dalvi with Mr. Vikrant Khare, Ms. Kiran Yadav, Ms. Pinki Chavan i/b Ms. Kshitija Wadatar for Petitioners.

Ms. Snehal S. Jadhav, AGP for Respondent-State.

Mr. S. B. Bhole with Ms. Maithili Jha i/b. Moinuddin Cutlerywala for Respondent Nos. 3 to 10.

CORAM : SANDEEP V. MARNE, J.

Dated : 3 March 2025.

P.C. :

1) The Petition challenges order dated 12 September 2024 passed by the Divisional Joint Registrar, allowing Revision Application No. 48 of 2024 and Appeal No. 27 of 2024, filed by the contesting Respondents. The Revision was filed against the order dated 23 January 2024, passed by the Deputy Registrar under provisions of Section 154B-23(2) of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act"), thereby disqualifying

the contesting Respondents from being the managing committee members. After disqualification of the contesting Respondents, the Deputy Registrar proceeded to pass a separate order dated 31 January 2024, under provisions of Section 77A of the Act, appointing an authorized officer to take care of day to day affairs of the society. Order dated 31 January 2024 was challenged by the contesting Respondent by filing Appeal No. 27 of 2024 under provisions of Section 152 of the MCS Act.

2) I have heard Mr. Dalvi, the learned counsel appearing for Petitioner, Mr. Bhole, the learned counsel appearing for the contesting Respondent and Ms. Jadhav, the learned AGP appearing for the Respondent-State.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the Deputy Registrar has exercised jurisdiction under provisions of Section 154B-23(2) of the MCS Act, thereby ordering disqualification of the managing committee members. Section 154B-23 provide 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,-

- (i) 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.”

4) In the present case the Deputy Registrar has held the contesting Respondents responsible for having committed an act contrary to the provisions of Section 154B-8(2) of the MCS Act. It would therefore be necessary to reproduce provisions of Section 154B-8 which provides thus :

“154B-8. Rights of Members to inspect the documents

(1) Every Member of a society shall be entitled to inspect, free of cost, at the society’s office during office hours, or any time fixed for the purpose by the society, a copy of the Act, the rule and the bye-laws, the last audited annual balance sheet, the profit and loss account, a list of the members of the Committee, a register of members, the minutes of general meetings, minutes of Committee meetings and those portions of the books and records in which his transactions with the society have been recorded.

(2) A society shall furnish to a Member, on request in writing and on payment of such fees at such rate as may be decided by the Registrar, from time to time, the copies of any documents mentioned in the foregoing sub-section within forty-five days from the date of payment of such fees and when the Society is assisted by the Government in the form of share capital, loan and land,

the said Society shall furnish such information within thirty days from the date so requested by a member.

5) Thus, under provisions of Section 154B-8, a member of the society is entitled to inspect records of the society. Under provisions of sub-Section 2 of Section 154B-8, the society is under obligation to furnish to its member upon receipt a request in writing and on payment of fees, copies of any documents mentioned in sub-Section 1 within a period of 45 days of the date of payment of such fees. In the event, the managing committee fails to provide copies of documents demanded by a member (so far as they fit into the ambit of sub-Section 1 of Section 154B-8), the managing committee members can be held responsible under provisions of section 154B-8(2) and accordingly attract disqualification under clause (iii) of sub-Section (1) of Section 154B-23.

6) In my view, in order to dislodge a democratically elected managing committee member, a concrete case of violation of provisions of sub-Section (2) of Section 154B-8 is required to be made out. In the present case, the Petitioners could not make out a concrete case that the managing committee failed to provide copies of documents within a period of 45 days from the date of payment of fees as per provisions of sub-Section 2 of Section 154B-8.

7) Perusal of the pleadings in the Petition would indicate that the first application was filed by the Petitioners

requisitioning copies of several documents on 15 August 2022. It is the case of the Petitioners that cheque of Rs.1,000/- in the name of the society was sent on 27 August 2022, seeking copies of documents demanded in the application of 15 August 2022. According to the Petitioners further cheque of Rs.1,000/- was deposited with the society on 3 March 2023 and Rs.50/- on 5 May 2023. Why these deposits are made is unknown. However, it appears that Petitioners were in the habit of submitting repeated applications to the society on 7 February 2023, 8 February 2023, 11 March 2023, 4 April 2023, 23 April 2023, 20 July 2023 and 21 September 2023.

8) Perusal of some of the applications would indicate that far from demanding copies of any documents, the same were actually argumentative in nature. This is particularly true with regard to the Application dated 8 February 2023.

9) The above pleadings would indicate that there is lack of information about the exact date on which a particular application for supply of copies of documents was made, the date on which fees for supply of those documents was paid and the date on which period of 45 days mandated under provisions of sub-Section (2) of Section 154B-8 expired. In absence of these details, it would be too dangerous to dislodge a democratically elected managing committee of the society.

10) Perusal of the findings recorded by the Divisional Joint Registrar would indicate that copies of the relevant documents have actually been supplied to the Petitioners. While the Deputy Registrar has recorded a finding that supply of such documents was after lapse of period of 75 days, the said finding is not supported by the exact details of date of making application and date of payment of fees. On the contrary the Divisional Joint Registrar's order dated 12 September 2024 refers to letter dated 15 February 2023 by the Society calling upon the Petitioners to pay fees for supply of copies of the documents.

11) The conspectus of the above discussion is that this Court is unable to record a definitive finding that there has been a failure on the part of the contesting Respondents to adhere to the provisions of the sub-Section (2) of Section 154B-8 of the MCS Act. Contesting Respondents being duly elected managing committee members, cannot be disqualified on the basis of surmises and conjectures. The Divisional Joint Registrar has rightly set aside the orders passed by the Deputy Registrar. No interference is warranted in the impugned order passed by the Divisional Joint Registrar.

12) The Petition is accordingly rejected.

[SANDEEP V. MARNE, J.]