

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.19092 OF 2024

Praful R. Metha and Ors.

...*Petitioners*

V/s.

The Divisional Joint Registrar, Co-operative Societies, Mumbai Division and Ors.

...*Respondents*

Mr. Simil Purohit, *Senior Advocate with Mr. Yadunath Chaudhari with Mr. Vishal Pattabiraman i/b. Mr. Viraj S. Jadhav for the Petitioners.*

Mr. S.D. Rayrikar, *AGP for Respondent Nos.1 and 2.*

Mr. Girish Godbole, *Senior Advocate i/b. Mr. Sandesh Daptare for Respondent Nos.3 to 5.*

CORAM: SANDEEP V. MARNE, J.

Dated: 13 March 2025.

P.C.:

1) Petition presents a unique conundrum. Respondent Nos.3 to 5 came to be disqualified from being managing committee members under the provisions of Section 78A of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) by Assistant Registrar, Co-operative Societies (F-N Division), Mumbai, vide order dated 5 September 2023. The main reason for disqualification of Respondent Nos.3 to 5 as recorded by the

Assistant Registrar, is their act of not implementing the General Body Resolution for redevelopment of Society's building through the chosen developer. The Assistant Registrar held that Respondent Nos.3 to 5, by misusing their position as managing committee members, erroneously terminated the appointment of developer vide letter dated 13 December 2022. It is an admitted position that termination of the developer has not been approved or ratified by the General Body of the Society. Thus commission of act contrary to the resolution adopted by the General Body was the main reason for disqualification of Respondent Nos. 3 to 5. However the order of the Assistant registrar is set aside by the Divisional Joint Registrar vide order dated 13 June 2024, which is subject matter of challenge in the present Petition filed by 37 members of the society who are desirous of removal of Respondent Nos. 3 to 5 for smooth implementation of redevelopment of society's building.

2) It is contended by Petitioners, who are 37 members of the Society, that out of the total 51 members eligible to vote, 45 members are supporting redevelopment of the Society's building through the chosen developer and that Respondent Nos.3 to 5 have acted contrary to the desire of the General Body by illegally terminating the appointment of the developer. It is alleged by the Petitioners that real intention behind terminating the appointment of developer is the demand of Respondent Nos.4 and 5 to have premises on the ground floor of the redeveloped building and for their individual interest, Respondent Nos.3 to 5

are indulging in arm twisting tactics with the developer by misusing their position as managing committee members.

3) When the Petition was taken up for hearing, Mr. Godbole, the learned senior advocate appearing for Respondent Nos.3 to 5 raises a preliminary objection that Petitioners have alternate remedy of filing revision before the Hon'ble Minister(Co-operation) under the provisions of Section 154 of the MCS Act since the impugned order dated 13 June 2024 is passed by the Divisional Joint Registrar while deciding appeal filed by Respondent Nos.3 to 5 under the provisions of Section 152 of the MCS Act. While Mr. Godbole is not entirely wrong in contending that Petitioners do have remedy of filing revision before the Hon'ble Minister, it is pointed out by Mr. Purohit, the learned senior advocate appearing for Petitioners that immediate steps are required to be taken for redevelopment of the Society's building as the building is in a dilapidated condition. He would submit that the Municipal Corporation has already issued notices under the provisions of Section 354 of the Mumbai Municipal Corporation Act, 1888 on 22 February 2025 and 10 March 2025. He would further contend that members of the Society are facing threats of disconnection of water and electricity supply on account of dilapidated nature of the building. Mr. Purohit would therefore submit that relegating the Petitioners to alternate remedy of filing revision before the Hon'ble Minister under Section 154 of the MCS Act would not be

an efficacious remedy considering the facts and circumstances of the present case.

4) Perusal of the impugned order dated 13 June 2024 passed by the Divisional Joint Registrar would indicate that he has proceeded to set aside the order of the Assistant Registrar essentially on account of the Assistant Registrar not waiting for submission of opinion by the federal society before exercising the jurisdiction under Section 78A of the MCS Act. Section 78A of the MCS Act provides thus:

78A. Power of supersession of committee or removal of member thereof

(1) If in the opinion of the Registrar, the committee or any member of such committee has committed any act, which is prejudicial to the interest of the society or its members or if the State Co-operative Election Authority has failed to conduct the elections in accordance with the provisions of this Act or where situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has, or is likely to ; come to a stand-still, or if serious financial irregularities or frauds have been identified or if there are judicial directives to this effect or, if there is a perpetual lack of quorum or, where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such committee stands disqualified by or under this Act for being a member of the committee, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections in writing as provided under sub-section (1) of section 78 and after giving a reasonable opportunity of being heard, **and after consultation with the federal society to which the society is affiliated** comes to a conclusion that the charges mentioned in the notice are proved, and the administration of the society cannot be

carried out in accordance with the provisions of this Act, rules and by-laws, he may by order stating reasons therefor,—

(a) (i) supersede the committee ; and

(ii) appoint a committee consisting of three or more members of the society otherwise than the members of the committee so superseded, in its place, or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society for a period not exceeding six months :

Provided that, the Registrar shall have the power to change the committee or any member thereof or administrator or administrators appointed at his discretion even before the expiry of the period specified in the order made under this sub-section :

Provided further that, such federal society shall communicate its opinion to the Registrar within forty-five days, from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the order of supersession or removed of a member and the Registrar shall be at liberty to proceed further to take action accordingly :

Provided also that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply and the committee shall not be superseded for a period exceeding one year :

Provided also that, nothing in this sub-section shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government ;

(b) remove the member :

Provided that, the member who has been so removed shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of any committee of any society till the expiry of period of next one term of the committee from the date on which he has been so removed :

Provided further that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949, shall also apply.

(2) The provisions of sub-sections (3), (4), (5) and (6) of section 78 shall apply mutatis mutandis, in relation to supersession or removal under this section.

(emphasis added)

5) Thus consultation with the Federal Society is required before making an order of removal of managing committee member under Section 78A of the Act. The Federal Society has time of 45 days to give its opinion failing which it can be presumed that the Federal society has no objection to the proposed action of removal of managing committee member.

6) Both the sides have expressed their own versions with regard to effect of second proviso to sub-section (1) of Section 78A of the MCS Act about deeming fiction on expiry of period of 45 days from the date of receipt of communication from the Federal society. While Mr. Godbole submits that period of 45 days had not expired as on 5 September 2023, Mr. Purohit would submit that copy of the show cause notice dated 18 May 2023 was furnished to the Federal society, which had called for necessary information and that therefore the date of receipt of show cause notice would be the relevant date for the purpose of computing period of 45 days for application of second proviso to sub-section (1) of Section 78A of the MCS Act.

7) In my view, these are arguable issues and therefore it would be appropriate that Petitioners are relegated to the remedy of revision before the Hon'ble Minister (Co-operation), who would be in a position to decide the said contentious issue. Also, the removal action entails disqualification for removed member from acting as managing committee member of any society for next 5-year term. Thus, apart from the issue of redevelopment of society's building, the removal order involve civil consequences for Respondent Nos. 3 to 5, which is a reason why adoption of statutory alternate remedy would be necessary in the facts and circumstances of the present case.

8) At the same time, this Court cannot turn blind eye to the fact that Respondent Nos.3 to 5 have removed the developer from 13 December 2022 and are apparently acting against the wishes of the General Body of the Society. Before me as many as 37 members of the Society are complaining that they are facing threats of disconnection of electricity and water supply and Respondent Nos.3 to 5 have held up the redevelopment process with a view to ensure maximum possible personal benefit from the developer. It complained that Respondent Nos.4 and 5, who are Chairman and Treasurer of the Society, do not even reside in the Society's building and merely own a clinic in the Society's building and that they do not really face any risk in the event of disconnection of water and electricity supply to the Society's building.

9) Decision of the revision by the Hon'ble Minister is likely to take some time. There are two interlinked issues here. One is about the individual rights of Respondent Nos. 3 to 5 to remain as managing committee members and second is about redevelopment of society's building which requires urgent actions. In my view, decision of revision which would ultimately decide the first issue of right of Respondent Nos. 3 to 5 to remain as managing committee members, need not hold up the second issue requiring urgent steps for redevelopment of society's building. In view of the peculiar facts and circumstances of the present case, I am inclined to adopt a slightly unusual course of action by directing convening of urgent Special General Body meeting of the Society for the purpose of adopting a resolution relating to redevelopment of Society's building and in such meeting, collective will of the members of the society can be expressed as to whether Society would continue with the chosen developer or would opt for appointment of a new developer. Convening of such Special General Body meeting of the Society would ensure that Respondents Nos.3 to 5, while acting as managing committee members, no longer hold up the process of redevelopment in the event General Body expresses its desire to go ahead for redevelopment through the earlier chosen developer. If the society adopts a resolution for going ahead with the redevelopment of earlier chosen developer, it can nominate authorised representatives to execute the necessary acts for taking ahead the process of redevelopment during pendency of revision before the Hon'ble Minister.

10) Considering the position that extensive submissions were canvassed before this Court, which could have decided the Petition of merits as well, the revision which would be filed by the Petitioner needs to be decided on merits rather than spending any further time on the issue of delay in filing the revision. Though Mr. Godbole has highlighted the position that the present petition itself is filed after expiry of period prescribed for filing of revision, this Court is directing decision of revision on merits considering the unique facts and circumstances of the present case.

11) I accordingly proceed to pass the following order:

- (i) Petitioners are granted liberty to file revision application before the Hon'ble Minister, Co-operation under the provisions of Section 154 of the MCS Act challenging the order dated 13 June 2024.
- (ii) Revision shall be entertained by the Hon'ble Minister condoning the delay in filing the same.
- (iii) Considering the peculiar facts and circumstances of the present case, the revision shall be decided on its own merits without being influenced by any of the observations made by this Court.
- (iv) During pendency of the revision application, the Society shall convene Special General Body meeting on or before 31 March 2025, in which the General Body shall take a decision with regard to

the redevelopment of the Society's building and, if necessary, appoint authorised representatives to execute the necessary acts for carrying forward the redevelopment process.

- (v) Respondent Nos.3 to 5 shall abide by decision taken by General Body and shall not commit any act contrary to such decision, subject of course to their right to challenge the resolution passed by the Special General Body in accordance with provisions of law.
- (vi) All rights and contentions of the parties are expressly kept open to be agitated in the revision application.

12) With the above directions, the Petition is disposed of.

[SANDEEP V. MARNE, J.]