

Shabnoor

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

WRIT PETITION NO. 1889 OF 2025

Vijay Lakhi & Ors.

... Petitioners

V/s.

District Deputy Registrar,
Cooperative Societies, H West Ward
& Ors.

... Respondents

Mr. Girish S. Godbole, Senior Advocate a/w Mr. Piyush Raheja a/w Samihan Vinchurkar a/w Mr. Jimish Shah, for petitioners.

Mrs. Snehal S. Jadhav, AGP for State – respondent No. 1.

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. Prashant P. Kulkarni a/w Ms. Rachna Mamnani a/w Mr. Subhash Yadav, for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 13, 2025

P.C.:

1. Challenge in the present petition is to an order passed by the Registrar purportedly under sub-section 3 of Section 79A of the Maharashtra Cooperative Societies Act, 1960 (“MCS Act”), thereby declaring Resolutions passed by the Special General Body meeting in relation to redevelopment of the society. The challenge principally arises from the contention that the managing committee included two co-opted persons whose appointments were effected in contravention of the circular issued by the

Secretary, State Co-operative Election Authority. This alleged deviation from the prescribed procedural norm not only undermines the legitimacy of the managing committee but also vitiates the resolutions passed thereunder. By the impugned order, the District Deputy Registrar further directed respondent No.2 – the society – to convene a fresh General Body meeting in accordance with the Government Resolution dated 4 July 2019, thereby compounding the irregularity through an administrative intervention that appears to exceed the statutory mandate.

2. For the purpose of considering the challenge to the impugned order, it is necessary to extract the relevant provisions of sub-Section (3) of Section 79A of the MCS Act, which read as follows:

“(3) Where the Registrar is satisfied that any person was responsible for complying with directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed, without any good reason or justification, to comply with the directions, the Registrar may by order—

(a) if the person is a member of the committee of the society, [declare him to be disqualified to be or to continue to be a member of the committee of any society] for a period of six years from the date of the order;

(b) if the person is an employee of the society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order, declare them disqualified as provided

in clause (a) above:

Provided that, before making any order under this subsection, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society to which the society is affiliated:

[Provided further that, such federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to take action under this section and the Registrar shall be at liberty to proceed further to take action accordingly.

Any order made by the Registrar under this section shall be final.”

3. It is evident that the language of the statute clearly circumscribes the Registrar’s administrative functions to specific acts of disqualification or removal of committee members or employees, thereby precluding any discretionary determination regarding the legality of General Body resolutions. Such a construction underscores the intent to reserve the adjudication of disputes on resolution validity for judicial scrutiny, in order to safeguard the principles of natural justice.

4. On considering sub-Section (3) of Section 79A, it is evident that the said provisions empower the Registrar to determine whether there has been compliance with the directions issued under Section 79A, and, in the event of non-compliance without any good reason or justification, to disqualify the members of the

managing committee for a period of six years from the date of the order. It further empowers the Registrar to direct that any employee of the society be removed forthwith on similar grounds. In exercising this power, the Registrar is duty-bound to afford a reasonable opportunity of hearing to the affected persons and to consult the federal society to which the society is affiliated before proceeding. The Registrar's affirmation of the validity of the resolutions, however, appears to extend beyond the mandate conferred by the statute, thereby rendering the administrative act arguably ultra vires and procedurally flawed.

5. It is well settled that the Registrar, under the provisions of the MCS Act, does not possess the authority to declare a Resolution of the General Body as illegal; such power is vested exclusively in the Court under Section 91 of the MCS Act. The statutory framework delineates the boundaries of administrative discretion by reserving the judicial review of General Body resolutions for the courts, thereby upholding the principle of separation of powers. Moreover, upon perusal of sub-Section (3) of Section 79A, it is evident that the provision solely contemplates measures for disqualification or removal, without conferring upon the Registrar any competence to assess or invalidate the resolutions passed by the General Body. This inherent limitation further accentuates the overreach inherent in the impugned order.

6. Apart from the powers conferred under sub-Section (3) of Section 79A and Section 79B, the Registrar, in the exercise of the power under sub-Section (3), is devoid of any authority to declare a Resolution of the General Body as illegal. Consequently, in my

considered opinion, the order passed by the Registrar is patently devoid of jurisdiction. Although the petitioners have an alternative statutory remedy available under Section 152 of the MCS Act, this does not extend to an appeal against decisions rendered under Sections 79A(3). The present case squarely falls within the exceptions delineated by the Hon'ble Supreme Court in *Whirlpool Corporation v. Registrar of Trademarks, Mumbai* [(1998) 8 SCC 1]. Specifically, the challenge is predicated on the contention that the impugned order is ultra vires the statutory framework and that the unilateral administrative action—characterized by a denial of the right to be heard and an unwarranted alteration of the venue—constitutes a flagrant violation of the audi alteram partem principle, thereby vitiating the proceedings ab initio and warranting judicial intervention.

7. In view of the foregoing, since the impugned order passed by the Registrar is manifestly without jurisdiction, it must be quashed and set aside.

8. The Rule is made absolute in terms of prayer clause (a). No order as to costs.

9. The writ petition stands disposed of accordingly.

(AMIT BORKAR, J.)