

Shabnoor

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

WRIT PETITION NO.6042 OF 2025

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Mercury Cooperative Housing
Society Limited Through Chairman ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Ajjit Anekar a/w Mr. Siddhant Sanhney i/by Auris
Legal for petitioner.

Mr. J. P. Patil, AGP for State – respondent Nos.1 to 3.

Mr. Vyan Shah i/b Mr. Sunil Chaurasia for respondent
No.4.

CORAM : AMIT BORKAR, J.

DATED : MAY 8, 2025

P.C.:

1. Rule.

2. Rule is made returnable forthwith.

3. The challenge in the present petition is directed against the order passed by the Divisional Joint Registrar in exercise of revisional powers under Section 154 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as “the said Act”) in Revision Application No.72 of 2024. By the said order, the Divisional Joint Registrar affirmed the order dated 12th December 2023 passed by the Deputy Registrar of Cooperative Societies. The grievance before the Deputy Registrar pertained to

the quantum of maintenance charges levied by the Cooperative Housing Society upon its members. The specific heads under challenge included the imposition of amounts towards the *cultural fund* and the *lift repair/replacement fund*, which, it is undisputed, were sanctioned by a duly convened General Body Meeting of the society. The Registrar, while acting under purported authority conferred by Section 79 of the said Act, entered into the validity and reasonableness of the aforesaid charges, and directed refund of a part of the amount collected. The appellate authority, namely, the Divisional Joint Registrar, while relying on Bye-law No.65 of the society, confirmed the said order.

4. Before proceeding to assess the tenability of the impugned orders, it becomes necessary to consider the scope and contour of Section 79 of the said Act, which governs the powers and duties of the Registrar in relation to the accounting and financial record-keeping obligations of a society. Section 79 mandates that a society shall maintain books of accounts in a prescribed form, furnish annual returns, and comply with directions of the Registrar in that regard. Sub-sections (1) to (4) of Section 79 confer powers upon the Registrar to direct the society to maintain records, to enforce compliance with statutory or regulatory obligations, and in case of default, to undertake such actions at the cost of the society. These provisions essentially cast a supervisory obligation on the Registrar, limited to administrative and regulatory compliance concerning the financial health and statutory governance of the society.

5. A plain and harmonious construction of the provision makes it abundantly clear that Section 79 does not clothe the Registrar

with adjudicatory powers to decide on the legality or fairness of levies which emanate from resolutions passed by the General Body of the society. The Registrar may direct the society to submit accounts, verify entries, and maintain transparency, but the Registrar does not sit in appeal over decisions of the General Body taken in its collective wisdom.

6. This position is no longer *res integra*. A Coordinate Bench of this Court in *Pravinkumar R. Salian v. Chief Minister and Minister of Co-operation*, (2004) 2 Mah LJ 12, while construing the scope of Section 79 of the said Act, has authoritatively held that the Registrar's jurisdiction under Section 79 is *administrative and supervisory* in nature and does not extend to adjudicating individual grievances pertaining to charges raised by the society in furtherance of a resolution of the General Body. The Court in *Pravinkumar Salian* underscored that where a member questions the validity, fairness, or reasonableness of any levy or charge approved by the General Body, the appropriate forum is the Cooperative Court under Section 91 of the said Act. This construction is consistent with the settled principle that the General Body is the supreme authority in the internal affairs of a society, and unless such decision is shown to be in conflict with the provisions of the Act, the Rules, or the Bye-laws, or vitiated by fraud or mala fides, it cannot be lightly interfered with.

7. The impugned orders passed by the Deputy Registrar and confirmed by the Divisional Joint Registrar reveal that both authorities have travelled beyond the confines of the jurisdiction vested in them by the statute. By examining the validity of a

General Body resolution and issuing directions for refund of amounts, these authorities have purported to exercise powers akin to judicial review—a function entrusted by the legislature exclusively to the Cooperative Court under Section 91. The reasoning of the authorities proceeds on a fundamentally flawed assumption that the Registrar can scrutinize the substance of resolutions passed by the General Body, which militates against the scheme of the Act and the law laid down in binding judicial precedent.

8. It must be borne in mind that jurisdiction is not conferred by the perceived injustice of a situation but by the enabling statute. Where the law has demarcated spheres of authority between administrative officers and judicial forums, any transgression of jurisdiction—even if motivated by bona fide concern—would be ultra vires and liable to be interfered with in judicial review. A quasi-judicial authority, such as the Registrar or the Revisional Authority under Section 154, cannot usurp the jurisdiction of a judicial forum under Section 91 merely by invoking supervisory powers under Section 79.

9. The reliance by the appellate authority on Bye-law No.65 also appears to be misplaced. Bye-laws cannot be read in isolation to expand the jurisdiction of statutory authorities beyond what is permitted by the Act. A bye-law, by its very nature, is subordinate to the statute, and cannot override the clear division of powers laid down under the Act.

10. Consequently, the impugned order dated 12th December 2023 passed by the Deputy Registrar and the confirming order dated [insert date] passed by the Divisional Joint Registrar in Revision Application No.72 of 2024, being devoid of jurisdiction and contrary to the express provisions of the Act, are liable to be quashed and set aside.

ORDER

(a) The impugned orders dated 12th December 2023 passed by the Deputy Registrar and the order in Revision Application No.72 of 2024 passed by the Divisional Joint Registrar are hereby quashed and set aside.

(b) It is clarified that the petitioner shall be at liberty to seek appropriate remedy under Section 91 of the Maharashtra Cooperative Societies Act, 1960, if so advised.

(c) Rule is made absolute in the aforesaid terms. No order as to costs.

(d) However, it is made clear that this Court has not adjudicated on the merits of the claim made by the respondents.

(e) The writ petition stands disposed of in above terms. There shall be no order as to costs.

(f) Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)