

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10957 OF 2025

Vijay Pandurang Khandare

...Petitioner

Versus

Office of the Divisional Joint Registrar of
Co-operative Societies, Konkan Division
and ors.

...Respondents

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Ms. Aarti Bhandari, a/w Ujwalata Jabal, for the Petitioner.
Ms. Savina Crasto, AGP for the State.

CORAM: N. J. JAMADAR
DATED: 14th AUGUST, 2025

Order:-

1. This petition calls in question the legality, propriety and correctness of a judgment and order dated 21st April, 2025 passed by the Divisional Joint Registrar, Konkan Division, in Revision Application No.137 of 2024, whereby the Divisional Joint Registrar was persuaded to allow the revision application preferred by respondent Nos.3 to 5 against an order dated 26th August, 2024 passed by the Deputy Registrar thereby disqualifying respondent Nos.3 to 5 for being elected and an officer or member of the committee for a term not exceeding five years, under Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 ("the Act, 1960"), by setting aside the order of disqualification.

2. The petitioner is a former Secretary of respondent No.6 Housing Society. The petitioner tendered resignation from the post of the Secretary of the society on 5th September, 2021. Annual General Body Meeting (“AGM”) of respondent No.6 society was held on 24th September, 2023.

3. The petitioner alleged in the said AGM, the Committee of the society did not lay before the society, the Audit Report of the preceding financial year and Rectification Report of earlier Audit. The petitioner thus filed a complaint with the Deputy Registrar, Co-operative Societies, for non-compliance of the mandatory provisions contained in Section 75(5) of the Act, 1960.

4. Pursuant to the said complaint, the Deputy Registrar issued a notice dated 20th December, 2023 calling upon the Chairman/Secretary of respondent No.6 society to show cause as to why action as envisaged by Section 75(5) of the Act, 1960 may not be taken. Respondent No.6 society through its office bearers submitted a reply.

5. After considering the submissions on behalf of the petitioner and the society, the District Deputy Registrar was persuaded to invoke the power under Section 75(5) of the Act,

1960 as there was, in his view, non-compliance of the mandatory provisions contained in Section 75(2) of the Act, 1960 on account of failure to place the rectification report of the earlier audit. Respondent No.3 President, respondent No.4 Secretary and respondent No.5 Treasurer were thus disqualified to be elected and continue to be the member of the committee of the society for a term not exceeding five years.

6. Being aggrieved, respondent Nos.3 to 5 preferred a revision before the Joint Registrar.

7. By the impugned order, the Joint Registrar reversed the order passed by the Deputy Registrar observing, *inter alia*, that the show cause notice was bad in law; the Deputy Registrar has not ascertained the veracity of the allegations before the issue of show cause notice and proceeded to initiate the action solely on the basis of the complaint of the petitioner; individual notices were not addressed to respondent Nos.3 to 5; nor the notices were addressed to all the members of the committee; Mr. Ajay Shah respondent No.5 was disqualified though no show cause notice was given to him and no material could be placed on record to counter the explanation offered by the society and members of the committee that the petitioner, after having tendered the resignation of his post of Secretary, had not

delivered the record of the society to the new Secretary and had, in fact, refused to hand over the record.

8. Being aggrieved, the petitioner has invoked the writ jurisdiction.

9. Ms. Bhandari, the learned Counsel for the petitioner, made a strenuous effort to draw home the point that the Revisional Authority was not justified in interfering with the order passed by the Deputy Registrar in exercise of limited revisional jurisdiction. There was neither any jurisdictional error nor defect in procedure which would warrant the exercise of revisional jurisdiction.

10. Taking the Court through the resolution passed in the AGM dated 24th September, 2023 Ms. Bhandari would urge that the non-compliance of the mandate contained in Section 75(2) of the Act, 1960 was evident as the rectification report of earlier audit was not at all placed by the committee before the society. The Divisional Joint Registrar had committed an error in law in interfering with the order of the Deputy Registrar on the ground that the society had offered an explanation that the petitioner had not handed over the record of the society to the new Secretary. It was submitted that the said explanation was

unworthy of acceptance as the resignation of the petitioner was accepted by the society on 15th May, 2022, almost after eight months of the date resignation.

11. A plain reading of the provisions contained in Section 75(5) of the Act, 1960 would indicate that in the event of default in holding the meeting within the time prescribed under Sub-section (1), or in complying with sub-sections (2), (2A), (3) or (4) of the said Section, the Registrar may by order declare any officer or member of the committee whose duty was to call such a meeting or comply with sub-sections (2), (2A), (3) or (4) to be disqualified for being elected or for being an officer or member of the committee for such period not exceeding five years, and also impose a penalty not exceeding five thousand rupees if the officer happened to be the servant of the society.

12. The Registrar is, thus, required to first arrive at a finding that the default has been committed in compliance with the mandatory provisions and then pass an order of disqualification. The said power is, however, not unregulated or uncannalised. The expression, “who without any reasonable excuse failed to comply with any of the aforesaid sub-sections” is impregnated with the requirement of an opportunity to the person, who is allegedly in default, to show cause. There is a

corresponding duty on the Registrar to ascertain as to whether the cause so assigned constituted a reasonable excuse. Default *per se* does not entail disqualification.

13. An opportunity of hearing, before the officer or member of the committee is visited with disqualification or penalty, as the case may be, is warranted at two stages. First, the Registrar must provide an opportunity to the person affected to show as to whether there was a reasonable cause for the non-compliance AGM. Second, the Registrar must also weigh the justifiability of the reason ascribed by such person and record a finding.

14. The aforesaid being the construct of the power under Section 75(5) which, in a sense, has drastic consequences for both the society and the member concerned, the justifiability of the action of the Deputy Registrar was required to be tested by the Revisional Authority.

15. To begin with, the show cause notice dated 20th December, 2023, appeared perfunctory. First, it was not addressed to all the members of the committee in their capacity as members of the Committee. It seems to have been addressed to the Chairman/Secretary of respondent No.6 society, (by designation only). Second, in the said show cause notice, there is a bare

reference to the complaint filed by the petitioner. It does not appear that the Deputy Registrar had satisfied himself about the existence of the circumstances which would warrant initiation of action under Section 75(5) of the Act, 1960. The show cause notice does not reveal that the Deputy Registrar had independently ascertained the veracity of the allegations in the complaint of the petitioner. Third, in the absence of show cause notice to the members of the committee, especially, Mr. Ajay Shah – respondent No.5, to whom the notice was not at all addressed, in his capacity as the Treasurer of the society, the consequent action could be said to be in breach of the principles of natural justice. The Revisional Authority has, thus, rightly adverted to aforesaid infirmities in the show cause notice.

16. Secondly, the Revisional Authority noticed that there was a dis-connect between the deficiencies which were noted and the final order passed by the District Deputy Registrar. In the final order it was mentioned that the action was initiated for failure to place rectification report in respect of the earlier audit before the committee.

17. Thirdly, it was the categorical stand of the society that the petitioner, who had tendered resignation with effect from 15th May, 2022, had not delivered the record of the society to the new

Secretary. In the view of the Divisional Joint Registrar, the aforesaid circumstance furnished a reasonable excuse.

18. In exercise of the supervisory jurisdiction, this Court need not delve into the sustainability of each of the reasons ascribed by the Divisional Registrar independently. It would be suffice to take a overall view of the matter. *Prima facie* the show cause notice appeared to be materially defective as it was not addressed to all the members of the committee; the show cause notice was not at all issued to Mr. Ajay Shah (R5); and the show cause notice does not indicate that the Deputy Registrar had formed an opinion that there was *prima facie* non-compliance of the mandatory provisions of Section 75 that necessitated action under Section 75(5).

19. The society and respondent Nos.3 to 5 consistently contended that the petitioner, who was the former Secretary of respondent society had withheld record. A definite finding on this aspect of the matter is not warranted in this proceeding. However, if that was the case, it would amount to putting a premium on the own wrong of the petitioner.

20. In the totality of the circumstances, the Divisional Joint Registrar appeared to have taken a correct view of the matter

and rightly exercised the jurisdiction to correct the error committed by the District Deputy Registrar. No interference is, thus, warranted in the impugned order.

21. The petition stands dismissed.

[N. J. JAMADAR, J.]