



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 193 OF 2024

Pankaj Prabha Co-operative Housing
Society Limited. Reg. No. NGP/HSG/889/79.
Khare Town, Dharampeth, Nagpur.
Through its Secretary,
Ramchandra s/o Madari Katkamwar,
aged about 76 years,
R/o. 9, Pankaj Apartment, Khare Town,
Dharampeth, Nagpur.

....**PETITIONER**

....**VERSUS**....

1] Divisional Joint Registrar,
Maharashtra Co-operative Societies,
Nagpur. Dhanwate Chamber Annex,
Building, Sitabldi, Nagpur.

2] District Deputy Registrar,
Maharashtra Co-operative Societies,
Nagpur City 2, Opp. Ganeshpeh,
Police Station, Nagpur.

3] The Liquidator,
Shri Chandrashekhar Bhusari,
District Deputy Registrar Co-operative
Societies, City 2, Opp. Ganeshpeth,
Police Station, Nagpur.

4] M.P.Raut,
The Auditor of District
Deputy Registrar Co-operative
Societies, City-2, Opp. Ganeshpeth,
Police Station, Nagpur.

....RESPONDENTS

Shri V.D.Muley, Advocate for petitioner.
Shri H.D.Dubey, AGP for respondent nos. 1 to 3/State.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 15/04/2025

ORAL JUDGMENT

Heard the learned counsel for the petitioner as well as the learned AGP for the respondent nos. 1 to 3.

2. The present petition is filed challenging the order dated 16/05/2023 passed in Revision No. 503/2023 by the Divisional Joint Registrar Co-operative Societies, Nagpur.

3. The petitioner is registered Housing Society bearing Registration No. NGP/HSG/889/79. The Society had constructed Pankaj Apartments at Khare Town, Dharampeth, Nagpur. The building consists ground plus three floors. The sale deeds of 25 flats in favour of the members are executed and 3 sale deeds for some or other reasons remained to be

executed. All the members are in possession of respective flats. The election of the Society was held for the period from year 2006 to 2009, however, the record of the Society was not handed over to the newly elected body and hence, the police complaint was lodged on 27/05/2006. On 29/05/2006, the new Managing Body registered the Deed of Declaration of the Society with the competent authority. The next election was held in the year 2009. The same Managing Body was continued unopposed. Thereafter, there are no elections and the same body is continued upto now. The new body carried out day to day management of the Society. There are no allegations of mismanagement nor there is any irregularity or misappropriation of the funds of Society by any of the office bearers.

4. The Managing Body had not received any order in respect of the appointment of Liquidator. As the apartment is of 40 years old and has gone very dilapidated and the Society wanted to redevelop the entire building of the Society, therefore, the Society applied before the District Deputy

Registrar and also submitted the copies of the orders/communications dated 14/08/2017 and 24/08/2022 on 17/01/2023. The petitioner – Society then filed an application for Revision under Section 107 and 154 before the Joint Registrar Co-operative Society, Nagpur on 24/01/2023 and prayed for setting aside orders/communications dated 14/08/2017 and 24/08/2022. The Revision was rejected by the order dated 16/05/2023. It is a matter of record that the petitioner had also applied under Right to Information Act for the copy of order of Liquidation passed on 30/03/2012. It was informed to the petitioner that the order is not available on record.

5. The learned AGP for the respondent nos. 1 to 3 also admitted that the order dated 30/03/2012 passed under Section 102(2) of the Maharashtra Co-operative Societies Act (in short, “said Act”) is not available with the authorities, however, the order passed appointing Liquidator and Administrator are based on the order dated 30/03/2012.

6. The learned counsel for the petitioner submits that

the order dated 30/03/2012 was not communicated to the petitioner - Society nor the order is available with the authorities and thus is non-existing order and hence, the orders passed appointing Liquidator and Administrator are illegal and without jurisdiction.

7. In my considered opinion, when the Divisional Joint Registrar Co-operative Societies, Nagpur observed this fact that the order dated 30/03/2012 is not available on record, he ought to have quashed and set aside the order consequently passed at Annexure-P-2 dated 14/08/2017. This order came to be passed on the basis of order dated 30/03/2012. From this order, it does not appear that any copy of this order or any notice of such appointment was given to the petitioner. The other order is of dated 24/08/2022. In this order also, the reference of order dated 30/03/2012 was given, on the basis of which, the order is passed. However, neither notice nor copy is supplied to the Society. It is the contention of the petitioner that, the Society is not defunct Society and is working. Before giving any effect

to the order dated 30/03/2012, it was incumbent to the respondent no. 1 to verify the position of the Society and it is mandatory.

8. On perusal of Section 102 of the said Act, it provides procedure for winding up. Sub-Clause (1)(a) of Section 102 of the said Act provides that *"after an inquiry has been held under Section 83 or an inspection have been made under Section 84 [or 89A] or on the report of the auditor auditing the accounts of the society, the Registrar is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up."*

9. Sub-Clause (2) of Section 102 of the said Act provides that *"a copy of such order made under sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society of being heard, may issue a final order, vacating or confirming the interim order."*

10. As such, it was necessary on the part of the Registrar before issuing order appointing Administrator or Liquidator, to give notice to the petitioner Society and to hear it on the order passed by the Registrar. It appears that no such opportunity was granted, nor the copy was supplied to the petitioner Society before passing the order under Section 102 of the said Act. Before passing final order, no inquiry appears to be conducted as contemplated under Section 102(1) of the said Act. No order is communicated in the prescribed manner before passing final order under Section 102(2) of the said Act. As least, the respondents have not placed any such document showing compliance of these Sections. As such, the impugned order dated 16/05/2023 is liable to be quashed and set aside. Accordingly, the present petition is **allowed**.

11. The impugned order dated 16/05/2023 passed in Revision Application No. 503/2023 by the Divisional Joint Registrar Co-operative Societies, Nagpur is hereby quashed and set aside.

12. The learned Divisional Joint Registrar Co-

operative Societies, Nagpur is at liberty to reassess the position of the petitioner Society as on today by following due procedure as contemplated in the said Act.

13. Accordingly, the petition stands **disposed of**.

(Smt. M.S.Jawalkar, J.)

B.T.Khapekar