



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5312 OF 2024

Parvath Shetty,
Age – 47 years,
Quint Suits, Gr. Floor,
Sakivihar Complex,
Sakivihar Road, Sakinaka,
Andheri (E), Mumbai.

... Petitioner

V/s.

1. State of Maharashtra,
Through the Minister,
Co-operation, Marketing
and Textile Department,
State of Maharashtra,
Mantralaya, Mumbai 400 032.

2. The Divisional Joint Registrar,
Co-op. Societies, Mumbai Division,
Malhotra House, Mumbai 400 001.

3. The Deputy Registrar,
Co-operative Societies,
Mumbai Western Suburbs,
having his office at,
211, 1st floor, MHADA,
Bandar (E), Mumbai 400051.

4. Prashant Gobind Hingorani,
having address at Flat No.101,
Plot No.127, CTS No.3, Part,
JVPD Scheme, 10 Gulmohar
Cross Road, Vile Parle (West),
Mumbai-400049.

5. Kishore D. Gandhi,
having his address at :
Flat No. 301, Plot No.127,
CTS No.3 part, JVPD Scheme,

10 Gulmohar Cross Road,
Vile Parle (West),
Mumbai-400049.

6. Jay Hiren Gandhi,
having his address at:
Flat No. 201, JVPD Scheme,
10 Gulmohar Cross Road,
Vile Parle (West),
Mumbai-400049.

7. Hiren Kishore Gandhi,
having his address at:
Flat No. 401, Plot No.127,
C.T.S. No.3 Part,
JVPD Scheme,10 Gulmohar
Cross Road, Vile Parle (West),
Mumbai-400049.

8. Sudesh Shoor,
having his address at:
Flat No.501, Plot No.127,
C.T.S. No.3 Part,
JVPD Scheme, 10 Gulmohar
Cross Road, Vile Parle (West),
Mumbai-400049.

9. Rakesh Desai,
having his address at:
Flat No.601, Plot No.127,
C.T.S. No.3 Part,
JVPD Scheme, 10 Gulmohar
Cross Road, Vile Parle (West),
Mumbai-400049.

10. Illuminati Information Pvt. Ltd.
having its address at:
Flat No.701, Plot No.127,
C.T.S. No.3 Part,
JVPD Scheme, 10 Gulmohar

Cross Road, Vile Parle (West),
Mumbai-400049.

11. JVPD Sterling CHS Ltd.
Plot No.127, C.T.S. No.3 Part,
JVPD Scheme, 10 Gulmohar
Cross Road, Vile Parle (West),
Mumbai-400049.

Through Administrator,
Advocate Devdas A. Aroskar,
59/2656, Safalya CHS Ltd.,
Gandhinagar, Near Bank of
Maharashtra, Bandra (E),
Mumbai 400 051.

... Respondents

**AND
WRIT PETITION NO.5111 OF 2024**

1. Yogesh Shetty,
B/10, Purushottam Nagar CHS,
4th floor, Opp. Bandra Lake,
S.V. Road, Bandra (W),
Mumbai 400050.

2. Uday Kumar Shetty,
1101, Prime Rose, Azad Nagar,
Andheri (W), Mumbai 400058.

3. Prashanth Shetty,
44, Pranav, Gandhinagar,
Bandra (E), Mumbai 400051.

4. Archana Shetty,
412, C wing, Saryu Apartment,
Toll Naka, Dahisar (E),
Mumbai.

5. Anjali Shetty,
A, Adonia, 2201, Heritage Garden,
South Avenue, Powai, Mumbai.

... Petitioners

V/s.

1. State of Maharashtra,
Through the Minister,
Co-operation, Marketing
and Textile Department,
State of Maharashtra,
Mantralaya, Mumbai 400032.

2. The Divisional Joint Registrar,
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3. The Deputy Registrar,
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having his office at,
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having address at Flat No.101,
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Plot No.127, C.T.S. No.3 Part,
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Mumbai-400049.
Through Administrator,
Advocate Devdas A. Aroskar,
59/2656, Safalya CHS Ltd.,

Gandhinagar, Near Bank of
Maharashtra, Bandra (E),
Mumbai 400 051.

... Respondents

Mr. Vishal Kanade with Mr. Bhavesh Magam, Advocates for the Petitioner in
WP No.5111 of 2024.

Mr. Sagar G. Talekar, Advocate for the Petitioner in WP No.5312 of 2024.

Mr. Sharan Jagtiani, Senior Advocate with Mr. Kunal Dwakadas, Mr.
Siddharth Joshi, Mr. Nitesh Ranavat, Mr. Akshit Dedhia and Mr. Minhas
Joshi i/by M/s Wadia Gandy , Advocates for the Respondent No.4.

Ms. S. A. Prabhune, AGP for the Respondent/State in WP No.5312 of 2024.

Mr. Tanu Bhatia, AGP for the Respondent/State in WP No.5111 of 2024.

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 12th FEBRUARY 2025

PRONOUNCED ON : 21st FEBRUARY 2025

JUDGMENT :

1. Petitioners have filed these petitions challenging the orders dated 13th January 2023 passed by the Deputy Registrar, Co-operative Societies removing them from the post of managing committee members and disqualifying them from being managing committee members for the next one term and appointing authorized officer to look after day-to-day affairs of the society under provisions of Section 78A of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). Appeal preferred by Petitioners

before Divisional Joint Registrar has been rejected by order dated 2nd May 2023. Further Revision preferred by the Petitioners before the Hon'ble Minister Co-operation is also rejected by order dated 1st March 2024. Accordingly, orders passed by the Divisional Joint Registrar and the Hon'ble Minister are also subject matter of challenge in the present petitions.

2. An open plot of land admeasuring 462.36 sq. meters situated at Survey No.287A, CTS No.3A(Pt.) was allotted by Maharashtra Housing and Area Development Authority (**MHADA**) in favour of Mr. Harbux Mulchand Chuggani on 23rd May 1962 and a formal Deed of Lease came to be executed in his favour on 6th October 1993 for a period of 99 years. Said Mr. Chuggani accordingly constructed a building comprising of ground plus two upper floors and sold the flats therein to Saparna Hingorani, Mukesh Gandhi and Kishore Gandhi/Lalita Gandhi. It is Petitioners' case that said Mr. Harbux Chuggani contacted one Mr. Deepak Shetty for redevelopment of the building so as to utilize balance FSI potential available on the leased plot. Said Mr. Depak Shetty became a Chief Promoter and formed and registered JVPD Sterling Co-operative Housing Society Limited by taking on board 10 outsiders as members of the society. The names of the said 11 persons shown to have been the original members of the society are as under:

1. Deepak R. Shetty
2. H. M. Chuggani
3. Swarup S. Khedekar
4. Ratnakar S. Shetty
5. Janki Shetty
6. Jyothi H. Shetty
7. Yogesh R. Shetty

8. Vinith N. Shetty
9. Anupama Y. Shetty
10. Ajay Kanuga
11. Nandu N. Shetty

3. The society was registered on 27th April, 2004 a tripartite Deed of Assignment was executed between Mr. Harbux Chuggani, Society and MHADA by which the lease in respect of the plot was apparently transferred in the name of the society. On 28th December 2006 a Development Agreement was executed and registered by the society with M/s Kamla Landmarc Builders (**Kamla Landmarc**) for redevelopment of the land and the building. The Development Agreement envisaged allotment of flat in the reconstructed building to the original three owners of flats Saparna Hingorani, Kishore/Lalita Gandhi and Mukesh/Harsha Gandhi whose names were included in the Annexure-A to the Development Agreement. A separate Annexure-C was attached to the agreement which included names of eleven members of the society and it was agreed that the Developer shall sell the flats constructed in the new building to the said persons whose names were included in Annexure-C at 20% less costs than the prevailing market rates. It appears that MHADA permitted addition of Prashant Hingorani, Kishore D. Gandhi and Jay Gandhi as members of the society by letter dated 23rd July, 2007. According to Petitioners, MHADA granted permission for construction of building comprising of seven floors in which three flats were to be allotted to the original occupants Prashant Hingorani, Jay Gandhi and Kishore Gandhi and rest of the flats were to be distributed according to the Petitioners to eleven members of the society. The Chief Promoter Mr. Deepak Shetty passed away on 7th April 2008. It appears that the original members are shown to have transferred their membership in the society in favour of Petitioners during the years 2007-08. Thus, except

Ratnakar Shetty, Yogesh Shetty and Nandu Shetty, rest of the eight members transferred their membership in favour of incoming members during 2004 to 2010. Petitioners are some of such new-coming members and claimed that they have been admitted to the membership of the society.

4. According to Petitioners, Developer-Kamla Landmarc sold some of the flats to new purchasers (Respondents No.7 to 10) instead of allotting them to the members of the society as per the Development Agreement. In the aforesaid background, elections were held to the managing committee of the society in the year 2013 and Petitioners participated in such election programme and were elected as managing committee members. In the meantime, one of the new incoming member Mr. Parvath Shetty-Petitioner in Writ Petition No.5312 of 2024 added to his role by becoming part of the development as he was admitted as a partner in Kamla Landmarc sometime during 2014-16 by replacing the earlier partner Mr. Jitendra Jain. It is Petitioners' case that in the year 2017 Kamla Landmarc obtained approval for construction of additional buildable area from MHADA and was granted Intimation of Disapproval for construction of upto twelve floors. It appears that dispute arose between two fractions in the society and the Deputy Registrar issued letter dated 25th October 2017 to MHADA for ascertainment of the individual beneficiaries in respect of society's building. On 16th November 2017, Mr. Parvath Shetty applied to MHADA for occupying membership of incoming members. Apparently, MHADA has not approved transfer of their membership. The Deputy Registrar issued letter dated 28th February 2018 to the society in respect of the fourteen members thereof and directed preparation of the provisional voters list for conduct of elections. Accordingly, elections were conducted on 26th May 2018 and Petitioners

were elected as members of the Managing Committee. In the meantime, Respondents No.4 and 9 had filed Commercial Suit No. 970 of 2018 before this Court challenging the No Objection Certificate issued by the Competent Authority for carrying out additional construction on the plot. The plaint in the suit came to be rejected on 22nd February 2019 making adverse comments against Respondents No.4 and 9 since they verified the plaint on behalf of the society. Kamla Landmarc completed construction of twelve slabs of the building by the year 2020.

5. In the above background, show cause notice dated 1st September 2022 was issued to the society and to its managing committee members proposing to initiate action under Section 78A(1)(b) of the MCS Act for their removal as managing committee members. According to Petitioners, they did not receive the show cause notice. The Deputy Registrar proceeded to pass order dated 13th January, 2023 removing the Petitioners from the managing committee and disqualifying them from acting as managing committee members for one more term. The Deputy Registrar also appointed authorized Officer/ Administrator to look after day-to-day affairs of the society. Petitioners preferred Appeal No.53 of 2023 before the Divisional Joint Registrar which came to be rejected by order dated 2nd May 2023. Petitioners preferred Revision before the Hon'ble Minister/Co-operation which has been rejected by order dated 1st March 2024. Petitioners have accordingly filed the present petitions. By interim order dated 8th April 2024, this Court directed maintenance of status-quo in Writ Petition No.5111 of 2024.

6. Mr. Kanade, the learned counsel appearing for Petitioners would submit that exercise of jurisdiction by the Deputy Registrar under Section 78A of the MCS Act in the present case is clearly erroneous as none of the eventualities enumerated for exercise of power under Section 78A of the MCS Act are present in the case. That the jurisdiction is erroneously exercised on the ground of absence of prior approval of MHADA for membership of the Petitioners, which reason is beyond grounds recognized under Section 78A of the MCS Act. That while conduct of inquiry about removal of members from Managing Committee, the Deputy Registrar has erroneously commented upon right of the Petitioners to be members of the society. That Section 78A of the MCS Act presupposes that the action thereunder can be initiated only against a person who is already a managing committee member, and whose membership of society is undisputed. That while deciding the issue of removal of managing committee member, the Deputy Registrar cannot undertake any inquiry into validity of membership of the society. That there is jurisdictional error in the impugned order of the Deputy Registrar.

7. Mr. Kanade would further submit that the impugned order has been passed by the Deputy Registrar in gross violation of the principles of natural justice. That Petitioners were not served with the show cause notices and the order has been passed ex-parte. That the notices have shown to have been dispatched to the address of incomplete building where Petitioners actually do not reside. That since the order is passed behind the back of the Petitioners, the same is liable to be set aside.

8. Mr. Kanade would further submit that the Deputy Registrar has already approved the membership of the Petitioners by letter dated 27th February, 2018. That the membership of the Petitioners is also admitted by filing of affidavit dated 28th February, 2018 by the Deputy Registrar confirming that membership of the society is finalized. That the very same authority could not have now commented against the validity of Petitioner's membership that too while deciding proceedings under section 78A of the MCS Act. He would further submit that clause (8) of bye-laws of the society does not mandate prior approval of MHADA for membership of the society. That in any case, membership of Respondents No.4 to 6 has also been approved by MHADA after their admission as members and that therefore, absence of prior approval to membership by MHADA cannot be a ground for exercise of jurisdiction under Section 78A of the MCS Act. He would pray for setting aside the impugned orders.

9. Mr. Talekar, learned counsel appearing for the Petitioner in Writ Petition No.5312 of 2024 adopts the submissions of Mr. Kanade.

10. The Petitions are opposed by Mr. Jagtiani, the learned senior advocate appearing for Respondent No.4. He would submit that the three authorities have concurrently ruled against the Petitioner by removing them as members of the managing committee. That none of the Petitioners own any flat in the society's building, but were erroneously managing its affairs. That therefore the Deputy Registrar has rightly removed them from the managing committee by exercising jurisdiction under Section 78A of the MCS Act. That contrary to the reliance of the Petitioners on the Development Agreement, the Developer has not allotted/sold any flats to

the Petitioners. That the Developer on the contrary has sold flats in the building to outsiders. That the real grouse of the Petitioners is about non-allotment/sale of any flats in society's building by the Developer, for which they cannot latch onto committee membership. That in absence of ownership of any flat in society's building, Petitioners cannot manage the affairs of the society. In support, he would rely upon judgment of this Court in ***Sharadchandra T. Rane and ors. Vs. Suresh Khedkar and ors.***¹ Mr. Jagtiani would also submit that the plot is ultimately owned by MHADA and no person can become a member of the society without express approval of MHADA. That the membership of the Petitioners has admittedly not been approved by MHADA but they have been illegally managing the affairs of the society. Mr. Jagtiani also raises serious doubt about the documents relied upon by the Petitioners in support of their claim of their membership. He would submit that the documents now relied upon by the Petitioners appear to be at variance with the one produced before MHADA in the year 2017 while seeking approval for transfer of membership.

11. Mr. Jagtiani would further submit that the entire plan has been engineered by Petitioner- Parvath Shetty, who has shown induction of his family members in the membership register and is actually managing the affairs of the society, though he now is a 95% partner in Kamla Landmarc (Developer). That he is the member of managing committee as well as the developer. He would submit that five additional floors constructed by the Developer have been attached by the Enforcement Directorate and adverse findings have been recorded against Mr. Parvath Shetty by the Enforcement Directorate about the criminal conspiracy entered with the main accused

1 2024 SCC Online Bom 854

Mr. Jitendra Jain. That the entire scheme is engineered by Mr. Parvath Shetty where he wants to eliminate any possible opposition to the redevelopment by the society by remaining in-charge of the society's affairs while also acting as the Developer. That the impugned order ensures that persons desired by Mr. Parvath Shetty, who do not own any flat in society's building, remain as its managing committee members and assist him in smooth development of the property.

12. Mr. Jagtiani would rely upon model bye-laws in support of his contention that no officer can become a member of the cooperative society, who does not own any flat in the society's building. He would submit that reflection of Petitioners' name in the society's register is irrelevant once it is found that Petitioners do not own any flat in the society's building, as held by this Court in ***Sharadchandra T. Rane*** (supra). He would submit that under clause 10B of the Development Agreement, the promoter member not purchasing the flats were expected to resign from membership of the society. That Petitioners have failed to purchase any flats in society's building for the last 19 long years but are still managing the affairs of the society.

13. Mr. Jagtiani would further submit that Petitioners' reliance on MHADA's resolution of 2010 cannot justify their membership as the said resolution merely seeks to regularize transfer of flats after period of 5 years which in the present case has not taken place. That there is no concept of mere transfer of membership in the society without transfer of the flat. Mr. Jagtiani would submit that the Deputy Registrar has rightly exercised jurisdiction under Section 78A of the MCS Act after coming to the

conclusion that Petitioners were acting prejudicial to the interest of the society by aiding and assisting the developer, though they do not even own any flat in the society's building. That mere collateral inquiry into legitimacy of claim while deciding proceedings under Section 78A of the MCS Act would not constitute an error of law or flagrant exercise of power by statutory authority. Lastly, he would submit that no interference is warranted in the impugned order in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India, since every error need not be corrected by this Court. In support, he would rely upon judgment of Apex Court in *Garment Craft Vs. Prakash Chand Goel*². He would pray for dismissal of the petition.

14. I have also heard Ms. Prabhune and Ms. Bhatia, the learned AGP appearing for the Respondent-State, who would support the orders passed by the Dy. Registrar, Divisional Joint Registrar and Hon'ble Minister.

15. Rival contention of the parties now fall for my consideration.

16. The impugned order dated 13th January, 2023 is passed by the Deputy Registrar in exercise of power of Section 78A(1)(b) of the MCS Act. Section 78A confers upon the Registrar the power of supersession of committee or removal of member thereof and provides thus :-

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

(1) If in the opinion of the Registrar, the committee or any supersession member of such committee has committed any act, which is prejudicial to of committee the interest of the society or its members or if the State Co-operative or removal of Election Authority has failed to conduct the elections in accordance with

2 (2022) 4 Supreme Court Cases 181

member thereof. 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 therefore,—

(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.”

17. Thus for exercise of jurisdiction under Section 78A of the MCS Act, the Registrar needs to record a satisfaction that :-

(i) the committee or any member of the Committee has committed any act which is prejudicial to the interest of the society or its members, or

(ii) if the State Co-operative Election authority has failed to conduct the elections, or

(iii) if the situation has arisen in which the Committee or any member refused or has ceased to discharge his/its functions and the business of the society has and is likely to come to stand-still, or

(iv) if serious financial irregularities or fraud is identified, or

(v) if there are judicial directives to that effect, or

(vi) if there is perpetual lack of quorum, or

(vii) if grounds under Section 78(1) have not been remitted or complied with, or

(viii) if member of the committee stands disqualified.

18. It is only in the above eventualities that the Registrar can exercise jurisdiction under Section 78A of the MCS Act. He needs to issue notice to

the committee or the member, as the case may be, and afford an opportunity of hearing. The Registrar also needs to consult with the federal society, to which the society is affiliated. After following the above procedure, if the Registrar 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 Acts, Rules or Bye-laws, he may either supersede the committee and appoint committee consisting of 3 or more members of the society, or remove a member from the managing committee.

19. This is a broad statutory framework of Section 78A of the MCS Act under which the Registrar can supersede the entire managing committee by appointing a fresh committee of three or more members or remove a particular member from the Committee of the society. So far as removal of member is concerned, such removal is not from membership of the society, but from its managing committee alone. Thus, even after removal of a person from the managing committee, he/she continues to remain member of the society. Upon removal of a member from the managing committee, such member get disqualified from being re-elected, re-copted 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.

20. Perusal of the impugned order dated 13th January, 2023 would indicate that following reasons are recorded by the Deputy Registrar for directing removal of Petitioners from members of the Managing Committee:-

"सुनावणी धरिकेमध्ये उपलब्ध असलेल्या कागदपत्रांवरून असे निदर्शनास येते कि, व्यवस्थापक समितीची निवडणूक दिनांक २८.०५.२०१८ रोजी झालेली असून त्यामध्ये श्रीमती अंजली शेटी, श्रीमती अनुपना शेटी, श्री पर्वत शेटी, श्री प्रशांत शेटी, श्री उदयकुमार शेटी, श्री योगेश शेटी, श्रीमती अर्चना शेटी असे एकूण ७ समिती सदस्य निवडून आलेले असले तरी श्रीमती अनुपना शेटी, वगळता इतर कोणत्याही सभासदास प्रत्यक्षात निवडणुकीच्या दिवशी किंवा तत्पूर्वी त्यांच्या सभासदत्वास कायद्यातील तरतुदीनुसार म्हाडा प्राधिकरणाने मान्यता दिलेली नाही.

वाचावे क्रमांक ०५ अन्वये निर्गमित केलेल्या नोटीसच्या अनुषंगाने अध्यक्ष, मुंबई जिल्हा को ऑपरेटिव्ह हॉऊसींग सोसायटी फेडरेशन लिमिटेड ११ बँक स्ट्रीट, विकास प्रेमिसेस, फोर्ट, मुंबई यांना विहित मुदतीमध्ये अभिप्राय सादर करणेबाबत कळवण्यात आलेले होते. परंतु संस्था सभासद नसल्यामुळे अभिप्राय देता येत नाही असे कळविलेले आहे. त्यामुळे सादर प्रकरणामध्ये त्याचे अभिप्राय प्राप्त करून घेण्याची आवश्यकता उरलेली नाही.

त्याअर्थी, श्रीमती अंजली शेटी, श्री पर्वत शेटी, श्री प्रशांत शेटी, श्री उदयकुमार शेटी, श्री योगेश शेटी, श्रीमती अर्चना शेटी हे संस्थेच्या व्यवस्थापक समितीमध्ये निवडून आलेले असून निवडणुकीच्या दिवशी किंवा तत्पूर्वी त्यांच्या सभासदत्वास म्हाडा प्राधिकरणाने मान्यता दिलेली नाही. त्यामुळे ते समिती सदस्य पदावर कार्यरत राहू शकत नाही. त्यामुळे श्रीमती अंजली शेटी, श्री पर्वत शेटी, श्री प्रशांत शेटी, श्री उदयकुमार शेटी, श्री योगेश शेटी, श्रीमती अर्चना शेटी हे दिनांक २८.०५.२०१८ रोजी किंवा तत्पूर्वी संस्थेचे रीतसर सभासद नसल्यामुळे ते व्यवस्थापक समितीवर काढून टाकणेबाबतची माझी खात्री झाली आहे. सबब खालीलप्रमाणे आदेश पारित करीत आहे."

21. While rejecting the Appeal preferred by the Petitioner, the Divisional Joint Registrar has recorded the following findings:-

"The Appellants herein were elected as managing committee members of the society, without approval of MHADA Authority till the day of election therefore, they are not eligible to continue as managing committee members of the society. Hence, the Respondent Deputy Registrar by order dated 13/01/2023 has disqualified the Appellants herein and appointed Authorized Officer upon the Respondent No.3 society. Further, in the instance case, the Appellants have not given satisfactory explanation on the aforesaid charges mentioned in the impugned order.

Further, in the instance case, it appears that the Respondent Deputy Registrar had made efforts to consult with the Federal society. However, the Federal society has informed that, the Respondent No. 3 society is not the member of the Federation.

In view of the above inferences, the Appellants herein have failed to discharge their duties as per the provisions of M.C.S. Act, Rules thereunder and bye-laws. So also, the reasons given by the Appellants are not satisfactory. Considering, the gross irregularities and negligence committed by the Appellants/ managing committee members, the Respondent Deputy Registrar after verifying the facts and following the due process of law has correctly passed the impugned order, which requires no interference on my part.”

22. The Hon’ble Minister while dismissing the revision preferred by Petitioners has recorded the following findings :

“प्रतिवादी क्र.४ संस्था ही म्हाडाच्या मालकीच्या जागेवर वसलेली सहकारी गृहनिर्माण संस्था आहे. म्हाडाने विषयांकित भुखंड ९९ वर्षाच्या लीजने श्री. चुगानी यांना दिल्यानंतर त्यांनी बांधलेल्या इमारतीचा पुर्नविकास झाल्यानंतर त्यामध्ये सुरुवातीला ७ मजल्यांच्या इमारतीचे बांधकाम करण्यात आले आहे. इमारतीचे पुर्नविकास करताना प्रतिवादी क्र.४ संस्थेची नोंदणी करण्यात आली त्यावेळी असलेल्या १० प्रवर्तक सभासदांचे हस्तांतरण अर्जदार यांच्याकडे करण्यात आल्याचे अर्जदार यांचे म्हणणे पुर्नविकास करताना संस्थेच्या नोंदणीचे समयी असलेल्या मुळ सभासदांना सदनिकांचे वाटप न करता विकासकाने अन्य व्यक्तींना सदनिका वाटप केल्याचे प्रतिवादी यांचे म्हणणे आहे. भोगवटा प्रमाणपत्राची प्रत सादर करण्यात आली नसल्याने प्रतिवादी क्र. ४ संस्थेच्या इमारतीमध्ये एकुण असलेल्या सदनिकांची संख्या व संस्थेच्या सभासद संख्याचा पडताळा घेता येत नाही.

प्रस्तुत प्रकरणात अर्जदार हे म्हाडाची पुर्वपरवानगी न घेता प्रतिवादी क्र.४ संस्थेचे सभासद झाले आहेत व व्यवस्थापाक समिती सदस्य म्हणून कार्यरत राहिले. या कारणास्तव अर्जदार यांना कलम ७८(अ) अन्वये समिती सदस्य पदावरून काढून टाकले असून पुढच्या कालावधीची मुदत समाप्त होईपर्यंत कोणत्याही समितीचा सदस्य म्हणून पुन्हा निवडून येण्यास, पुन्हा स्विकृत केले जाण्यास, नामनिर्देशित करण्यास प्रतिवादी क्र.२ यांनी दि. १३.०१.२०२३ रोजीच्या आदेशाने अपात्र ठरविले आहे. अर्जदार पैकी श्रीमती अनुपमा शेटी वगळता इतर कोणत्याही सभासदास प्रत्यक्ष निवडणूकीच्या दिवशी किंवा तत्पुर्वी त्यांच्या सभासदत्वास कायद्यातील तरतुदीनुसार म्हाडा प्राधिकरणाने मान्यता दिली नाही. म्हणून अर्जदार यांचेवर अपात्रतेची व समिती बरखास्ततेची कारवाई प्रतिवादी क्र.२ यांनी केली आहे. अर्जदार यांनी त्यांच्या युक्तीवादात असे नमूद केले आहे की, म्हाडा कडील ठराव क्र.६४७० दि. ०६.०५.२०१० च्या ठरावानुसार गाळे/भुखंड घेतानाच्या ५ वर्षांच्या कालावधीनंतर मिळकतीचे अभिहस्तांतरण झाले असल्यास गाळे/भुखंडाचे हस्तांतरण/नियमितीकरणाची परवानगी म्हाडाकडून घेण्याची आवश्यकता नाही. त्यामुळे म्हाडाची पुर्वपरवानगी घेतली नाही म्हणून अर्जदार यांना अपात्र ठरविता येणार नाही. अर्जदार हे दि.०६.०५.२०१० रोजी म्हाडाच्या उपरोक्त नमूद ठरावापुर्वी प्रतिवादी क्र.४ संस्थेचे सभासद झाले असल्याचे प्रथमदर्शनी दिसून येते. तथापि विषयांकित ठरावाचे अवलोकन करता सदरील ठराव हा पूर्वलक्षी प्रभावासह लागू होत नसल्याचे दिसून येते. सदर ठरावाची अंमलबजावणी इतिवृत्त स्थायी

करणाची वाट न पाहता तात्काळ लागू करावी असे उक्त ठरावात नमूद करण्यात आले आहे. तसेच अर्जदार यांनी त्यांच्या युक्तीवादामध्ये असेही नमूद केले आहे की, विषयांकित कायदेशिर कारवाई करण्यापूर्वी अर्जदार यांना कोणतेही म्हणणे मांडण्याची संधी दिलेली नाही तसेच कोणतेही कारणे दाखवा नोटीस प्रतिवादी क्र.२ यांनी दिली नसल्याचे नमूद केले आहे. तथापि प्रतिवादी क्र.२ यांच्या दि. १३.०१.२०२३ रोजीच्या आदेशात विषयांकित प्रकरणी प्रतिवादी क्र.२ यांनी अर्जदार यांना दि. ०१.०९.२०२२ व दि. ०९.१२.२०२२ रोजी कारणे दाखवा नोटीस दिली असल्याचे तसेच सदर नोटीसच्या अनुषंगाने प्रतिवादी क्र.२ यांचे कार्यालयात सुनावणी घेण्यात आले असल्याचे नमूद केले असल्याचे दिसून येते.

उपरोक्त विवेचन विचारात घेता प्रतिवादी क्र.१ यांचे दि. ०२.०५.२०२३ रोजीच्या आदेश व प्रतिवादी क्र.२ यांचे दि. १३.०१.२०२३ रोजीचे आदेशास कोणतेही हस्तक्षेप करण्याची आवश्यकता नसल्याचे माझी धारणा झाल्याने मी खालील प्रमाणे आदेश देत आहे.”

23. Thus the primary reason why Petitioners are removed from membership of the managing committee is non-grant of approval by MHADA to the membership of the Petitioners prior to or as on the date of their election. The federal society was apparently consulted by the Deputy Registrar who has preferred not to give its recommendations on the ground that the society is not its member. The Divisional Joint Registrar and the Hon'ble Minister have also upheld the ground of non-grant of approval by MHADA to the membership by the Petitioners for their ouster as members of the managing committee.

24. The findings recorded by Deputy Registrar, Divisional Joint Registrar and the Hon'ble Minister do *prima facie* create an impression as if they have essentially touched upon the issue of validity of membership of Petitioners. As observed above, mere removal of a member from the managing committee does not *ipso-facto* result in his removal as a member of the society. There is a separate provision in the form of Section 154B-9 of the MCS Act, which deals with removal of a member from society's membership. Section 154B-9 provides thus:

154B-9. Removal of a Member

When any question arises in respect of a Membership of a person as to whether he has been duly admitted to the Membership of society or has been admitted in violation of the provisions of this Act, rules and bye-laws, the Registrar suo motu or on an application shall decide such question within three months from the date of application and if he is satisfied that the person has been admitted as Member in violation of provisions of this Act, rules and bye-laws, pass an order to remove such person from Membership, but no such order adverse to any such Member shall be given without giving him an opportunity of being heard.”

25. It is therefore strenuously sought to be submitted by Mr. Kanade that while conduct of inquiry under Section 78A of the MCS Act, the Deputy Registrar does not have jurisdiction to comment upon validity of Petitioners’ membership with the society. He has submitted that the jurisdiction under Section 78A of the MCS Act is essentially premised on a presumption of valid membership of a person of the society and what the Registrar does under Section 78A of the MCS Act, is to decide whether such person can continue to hold the position as member of the managing committee or not. Mr. Kanade is not entirely wrong in contending so as the issue of validity of membership of society cannot be ordinarily gone into while conduct of inquiry under Section 78A of the MCS Act while deciding the issue about right of continuation of such member on society’s managing committee. In ordinary course therefore, this Court would have interfered in the impugned orders to the extent they seek to touch upon the issue of validity of membership of Petitioners and would have relegated the contesting Respondents to the remedy under Section 154B-9 of the MCS Act.

26. However, Mr. Jagtiani has relied upon judgment delivered by me in ***Sharadchandra T. Rane*** (supra) in which, the issue of determination of

validity of membership outside the provisions of Section 154B-9 has been dealt with by this Court. In ***Sharadchandra T. Rane*** the case involved rehabilitation of slum and implementation of redevelopment process through a society formed by slum dwellers. In the society, initially 71 persons were included in Annexure-II prepared by the Municipal Corporation which later directed deletion of names of 26 + 7 persons from Annexure-II. However, despite deletion of their names from Annexure-II, their names were apparently not deleted from membership register of the society. When issue came up about preparation of voters' list for conduct of elections of the society, the Returning Officers deleted the names of said 33 members from the voters' list on the ground that their names no longer figure in the Annexure-II. The 33 members, whose names were deleted from the voters' list felt aggrieved by such action by the Returning Officer and insisted that their names must be continued in the voters' list. So long as their names continued to figure in the membership register of the society, it was contended on behalf of the Petitioners therein that, a separate procedure is contemplated under provisions of Section 154B-9 for removal of a member. On the contrary, it was contended on behalf of the contesting Respondents therein that the said 33 members did not own or occupy any flat or unit in society's building and therefore, they did not have any right of participating in the affairs of the society. The submissions of rival parties are captured in paragraphs No.8 and 9 of the judgment which reads thus :-

“8. Mr. Kanetkar, the learned counsel appearing for Petitioners would submit that the impugned communication suffers from jurisdictional error in that the Authorized Officer nominated by Respondent No. 2 does not have jurisdiction to decide the issue of membership of a Co-operative Society. He would submit that as of today, Petitioners continue to remain the members of the Society. That a

separate procedure is contemplated under provisions of section 154B-9 of the Maharashtra Co-operative Societies Act, 1960 (the Act of 1960) for removal of a member. That the Election Officer does not have jurisdiction to go into an issue of removal of a person from membership of a Society. Mr. Kanetkar would then invite my attention to Rule 76-E of the Rules of 2014 and submit that the remit of enquiry to be conducted by the Election Officer while deciding the objections to the provisional list of voters is only to correct omission or errors in respect of name, address or any other particulars in the list. He would submit that the scope of enquiry to be conducted by Election Officer under Rule 76E of Rules of 2014 does not include within its ambit the issue of validity of membership of any member. He would submit that the impugned communication is issued by the Authorized Officer on an assumption that the names of Petitioners would not figure in the list of members, which is contrary to the factual position. He would submit that as of today the names of Petitioners continue to be reflected on Form I and Form J, in which Register of members is maintained. That so long as the names of Petitioners are not deleted from Forms I and J, the Election Officer cannot direct deletion of names of such members from the voters list. In support of his contention Mr. Kantekar would rely upon Division Bench judgments of this Court in Dhondiba Parshuram Lakade v. Shri Someshwar Sahakari Sakhar Karkhana Ltd., 1979 Mah LJ 311 and Padmasingh Hanmantrao Jadhav v. The State of Maharashtra in Writ Petition No. 2969 of 2022 decided on 15 March 2022.

9. Mr. Soman, the learned counsel appearing for Respondent No. 5 would oppose the Petition raising a preliminary objection that Petitioners have alternate remedy under Rule 78 of Rules of 2014 to raise the election dispute under provisions of section 91 of the Act of 1960. In support of his contention, he would rely upon Division Bench judgments of this Court in Pandurang Laxman Kadam v. State of Maharashtra, 2015 SCC OnLine Bom 5840 and Dattatray Genaba Lole v. Divisional Joint Registrar, Co-operative Societies, (2021) 2 HCC (Bom) 612. Without prejudice to his right of availability of alternate remedy, Mr. Soman would contend that the Petitioners do not own or occupy any flat or unit in the building of the Society. Referring to the definition of the terms 'allottee', 'housing society' and 'member' under section 154-B(1) of the Act of 1960, Mr. Soman would contend that Petitioners cannot in fact remain as members of the Society. That upon deletion of their names from Annexure II by MCGM, they automatically cease to be members of the Society. He would submit that the 26 persons have in fact accepted allotment in respect of another building at Kandivili and therefore they cannot decide or take part in management of building of the Society at Sewree. He would submit that deletion of names of the said 33 persons from membership Register is merely a ministerial act, non-performance of which does not entail any benefit of membership on such 33 persons. He would pray for dismissal of the Petition."

27. In ***Sharadchandra T. Rane***, this Court held that mere continuation of names of those 33 persons in membership register, who did not own or

occupy any unit/flat in the society's building, does not create any right in their favour to participate in the affairs of the building. This Court held that the very purpose of formation of managing committee of a housing society is to ensure that the affairs of the building of the society are collectively managed by the elected members and the persons not owning any flat in the society's building cannot not claim a right to manage affairs of the society. This Court held in paragraphs No.14, 15, 17, 19 and 20 as under :-

“ 14. In my view, managing committee of a co-operative housing society is elected essentially for the purpose of managing the affairs of the Building of the Society. As of now, Petitioners neither own nor occupy any flat/unit in the Society's building and on the contrary, they are residing in an altogether different building located at Kandivali. Petitioners' eligibility for allotment of flat/unit in Society's building is yet to be decided as Writ Petition (L) No. 7948 of 2020 filed by them is still pending before Division Bench of this Court.

15. The Scheme of Chapter XIII-B of the Act of 1960 is such that only a unit/flat owner in the building of the Society can become member of such Society. What Petitioners expect is that though they do not own or occupy any flat or unit in the Society's Building, they must be permitted to take part in the management of the Society. This right is sought to be asserted on the ground that Petitioners' names still continue to be reflected in the Society's membership register. In my view, MCGM directed the Secretary of the Society by order dated 28 February 2019 and 1 March 2019 to delete names of 26 non cooperating residential tenants and 7 non cooperating commercial tenants. It appears that some of the Petitioners were on the Managing Committee of the Society at the relevant time, especially Petitioner No. 1, who was its Chairman. Taking disadvantage their positions in the Managing Committee of the Society apparently, they did not effect the necessary change in the membership register of the Society by deleting the 33 names therefrom as per the direction issued by MCGM on 28 February 2019 and 1 March 2019. I however do not wish to delve deeper into this aspect because continuation or deletion of names of said 33 persons from membership register is not the issue involved in the present Petition. The limited issue involved in the present Petition is about right of the said 33 persons to participate and vote in the election process by retaining their names in the list of voters.

17. However the issue before the Division Bench in Dhondiba Parshuram Lakade (supra) was slightly different. In that case, the names of some of the members were sought to be deleted from the provisional list of voters on the grounds viz, (i) that certain members were under the age of 18 years; (ii) that certain

members did not grow sugarcane in atleast half acre of the land nor supplied the same to the factory; (iii) though some of the members owned land, they did not grow sugarcane; and (iv) some of the members did not hold land as owners or tenants in the area of operation of the sugar factory. In the present case, the issue is entirely different. On account of deletion of names of 33 persons from Annexure-II coupled with the factum of allotment of tenements to some of them in altogether different building, the said 33 persons do not own or occupy any unit or flat in the building of the Society. The issue is whether Petitioner residing at Kandivali should be permitted to take part in management of society's building located at Shwree on a specious and technical plea that their names still continue to be reflected in membership register. Their names continue to be reflected in the Membership Register only on account of non-performance of ministerial act by some of the Petitioners themselves, who were on the managing committee of the Society. Thus Petitioners are seeking to take benefit of their own wrong by continuing their names in the register of members of the Society. In my view therefore, though the judgment of Division Bench of this Court in Dhondiba Parshuram Lakade (supra) has clarified the limited scope of enquiry to be conducted by the Election Officer while deciding the objection relating to inclusion/deletion of names from provisional list of voters, since Petitioners do not have any right to participate in the affairs of the Building of the Society on account of non-holding of any flat/unit in the Society's Building, the ratio in the judgment in Dhondiba Parshuram Lakade (supra) would not apply to the present case.

19. I am in respectful agreement with the view expressed by the Division Bench in Padamasingh Hanmantrao Jadhav (supra). However, in paragraph 6 of the judgment, the Division Bench has clarified that the statute contemplates that a person may remain a member but can still become ineligible to vote. In the present case, this is exactly what has happened. The names of the Petitioners continue to be reflected on the membership register on account of their own acts in not removing the names of 33 persons from such register despite the direction to that effect by MCGM. Now they want to take benefit of their own wrong by contending that since their names continue to be reflected in Form I and J, they must be permitted to vote. In my view therefore, the judgment of the Division Bench in Padamasingh Hanmantrao Jadhav (supra) would not enure to the benefit of the Petitioners.

20. As observed above, the very purpose of constitution of managing committee of a housing society is to ensure that the affairs of the building of the society are collectively managed by the elected members of such Housing Society. As of today, none of the Petitioners own or occupy any unit/flat in the building of the Society, and many of them are residing far away in altogether building in Kandivali. While residing in a building at Kandivali, they want to manage and control the affairs of the Building of the Society at Sewree. This is something which cannot be countenanced by misinterpreting the provisions of the Act of 1960 and the Rules of 2014. It is not that the Petitioners are going to lose membership of the Society for ever. In the event they succeed in the Writ Petition challenging order dated 28 February 2019 and 1 March 2019 passed by MCGM,

their membership to the Society would obviously be restored and they would be in a position to participate in the Managing Committee of the Society, albeit in the next elections. As of now, the limited denial to the Petitioners is not to participate in the current election process for electing the Managing Committee of the Society till the issue of deletion of their names from Annexure II is decided in Writ Petition pending before the Division Bench. In my view therefore no serious error can be traced in the view taken by the Authorized Officer in the impugned communication dated 6 March 2024.”

28. Mr. Jagtiani would submit that the judgment of this Court in ***Sharadchandra T. Rane*** squarely applied to the facts of the present case where none of the Petitioners own or occupy any flat in society’s building but have been managing affairs of the society.

29. There is no dispute to the position that as of now, there is neither any allotment nor execution of the registered agreement in favour of any of the Petitioners under which they can claim a right in respect of any flat in society’s building. They claim right to purchase flats in society’s building on the basis of covenants of the Development Agreement dated 28th December, 2006. Before I proceed to consider the covenants of the said Development Agreement, it must be noted that the present case involves a rather unique situation where a co-operative housing society is formed by total strangers, who initially did not have a semblance of right in respect of the leased land. As noted while narrating facts of the case, the plot was originally allotted by MHADA and later leased in favour of Mr. Harbux Mulchand Chuggani vide Lease Deed dated 6th October 1993, who had constructed ground+two floors structure by selling three flats to Saparna Hingorani, Mukesh Gandhi and Kishore Gandhi/Lalita Gandhi. One Mr. Deepak Shetty promoted and got registered J.V.P.D. Sterling Co-operative Housing Society Limited by having 10 more persons (mostly his relatives) as members of the society. None of the said 11 members, who formed and registered the

society, had any semblance of right in either the plot or any flat in the building constructed thereon. A co-operative society formed in the air assumed the character of a developer by entering into an arrangement for re-development of the building constructed on plot leased out to Mr. Harbux Mulchand Chuggani. A tripartite agreement was executed between the society Mr. Chuggani and MHADA on 27th September 2009 transferring the leasehold rights as well as construction rights in respect of the plot in favour of the society. The society thereafter came out of its character as a developer and decided to hand over development rights to professional developer-Kamla Landmarc. This is how Development Agreement dated 28th December, 2006 came to be executed by the society in favour of Landmarc Developers. Till execution of this Development Agreement dated 28th December, 2006, the three original flat occupiers were not even made members of the society who came to be admitted as members much later on 23rd July, 2007.

30. It would now be necessary to examine the covenants of the Development Agreement. The relevant clauses relied upon by Mr. Kanade are clauses 4a and 5 which read thus :

“4a. In consideration of the grant by the society to the developer the development rights herein mentioned in respect of the property, the Developer shall construct an area of 215.53 sq. meters along with some additional area free of cost and the same to the structure Owners whose names are appearing in Annexure “A” on the floors as mentioned against the respective names. The Developer has calculated the cost of construction and other related expenses of such area at a lump sum price of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs Only), which is a good consideration the developer is giving to the society for the Development of the property.

5. The developer shall construct balance FSI in the form of such upper floors as may be approved by the Appropriate Authorities by consuming ___ sq. mtrs of

FSI, which the Developer shall sell to the members at 20% less than prevailing market rates and amenities provided by the Developer to the member and the entire consideration received shall be appropriated by the Developer without being accountable to the Society or any other person made clear that the discount is available exclusively to the persons whose names are appearing in the Annexure "C".

31. Thus, the Development Agreement included list of original 3 occupiers in Annexure-A and 11 members of the society in Annexure-C. Developer agreed to construct area of 215.53 sq. meters as well as some additional area free of cost and hand over the same to the three flat owners in Annexure-A to the Development Agreement. So far as 11 members of the society are concerned, they had a right to purchase the flats in the building at 20% less price than the prevailing market rates as per clause (5). There is another vital clause in the form of clause 10(b) under which the members of the society not desiring to purchase flats were supposed to resign from the society's membership. Clause 10(b) reads thus :-

"Clause 10 (b) – All the flats in the new building excluding the structure owners Portion shall be sold by the Developer to the member on such cost as fixed by the Developer subject to prevailing market price and in the event of any member not interested in occupying the flat in the new building he/she/they shall in advance intimate their wish to the developer resigning from the membership of the society and the developer shall be free to transfer the resigning members membership to any person of its choice ("new member") and sell the Flat to the incoming member on the price determined by the developer."

32. It is an admitted position that till date, none of the eleven original members of the society have purchased any flat in the building despite passage of 19 long years. On the contrary, it appears that the Developer-Kamla Landmarc sold some of the flats to outsiders (Respondents No.7 to 10) in the year 2008-09 and the original members of the society did not raise any objection to such act of the developer. According to Mr. Jagtiani, clause 10(b) of the Development Agreement has kicked in and the

eleven original members of the society ought to have resigned from the society's membership. Be that as it may. What is more interesting is the fact that eight out of eleven original members of the society who did not bother to purchase any flat from the Developer at concessional rate, have apparently transferred their membership to outsiders. Mr. Jagtiani has presented before this Court a chart containing details of alleged membership of the society as of today which is as under:-

<u>ANNEXURE 2</u>							
<u>CHART CONTAINING DETAILS OF ALLEGED MEMBERSHIP OF THE PETITIONERS</u>							
	April 2004	2007	First batch of transfers		Second batch of transfers		2018
	Promoter Members as on date of registration of the society	Tenants of Old structure who were admitted to membership in 2007	Transferee	Date of transfer	Transferee	Date of transfer	Alleged list as on 28.05.2018
1.	Deepak Shetty		Janki Shetty	15.02.2010			Janki Shetty
2.	HM Chuggani		Prashant Shetty	30.06.2007			Prashant Shetty (P3)
3.	Swaroop Khedekar		Anjali Shetty	15.02.2008			Anjali Shetty (P5)
4.	Ratnakar Shetty						Ratnakar Shetty
5.	Janki Shetty		Shankar Alva	31.07.2004			Shankar Alva
6.	Jyothi Shetty		Archana Shetty	15.02.2008			Archana Shetty (P4)
7.	Yogesh Shetty						Yogesh Shetty (P1)
8.	Vinitha Shetty		Ramesh Alva	31.07.2004	Parvath Shetty	11.01.2008	Parvath Shetty (P)
9.	Anupama Shetty		Tejas Mehta	31.07.2004	Udaykumar Shetty	15.02.2008	Udaykumar Shetty (P2)
10.	Ajay		Anupama	15.02.2008			Anupama

	Kanuga		Shetty				Shetty
11	Nandu Shetty						Nandu Shetty
12.		Kishore Gandhi and Lalita Gandhi					Kishore Goandhi and Lalita Gandhi (R5)
13.		Jay Gandhi					Jay Gandhi (R6)
14.		Prashant Hingorani					Prashant Hingorani (R4)

33. Thus, without even having a semblance of right in respect of any flats in society's building, eight out of eleven original members are shown to have transferred their membership in the society. Thus, the membership in a housing society is traded freely without even owning or occupying a flat/unit in society's building. Whether this can be done is highly questionable. However, since the issue of validity of membership is not involved in the present case, I am not delving deeper into this.

34. Another interesting development that has taken place in the present case is that one of the original members Mr. Parvath Shetty (Petitioner in Writ Petition No.5312 of 2024) has become 95% partner in the Developer-Kamla Landmarc. Thus, Mr. Parvath Shetty now wears twin hats of being a managing committee member of the society as well as the developer. It is on account of this peculiar circumstance, Mr. Jagtiani has raised an allegation that the developer has kept the managing committee of its choice over the society so as to prevent creation of any hurdle in the development of building. This according to Mr. Jagtiani is the highest possible act committed by the managing committee members which is

prejudicial to the interest of the society. He has alleged that Mr. Parvath Shetty and five of his family members (Petitioners in Writ Petition No. 5111 of 2024 who also belong to Shetty family) are functioning as managing committee members of the society with a view to ensure that the Developer gets a free hand for effecting the development as per his whims and fancies.

35. To my mind, the above situation presents a picture where Petitioners are deliberately kept on the managing committee of the society though they are not interested in purchasing any flats in the building for ensuring smooth development of the building as per the wishes of the developer. Thus the persons of choice of the developer, who do not own any flat in the building, are taking all decisions for redevelopment of the plot leased out to the society.

36. The long and short of the above discussion is that neither the original eleven members nor the alleged transferee members own any flat in the building. None of them have bothered to execute any agreement with the Developer for purchase of any flat in the society's building. Petitioners are essentially retained as members of the society only for the purpose of enabling Mr. Parvath Shetty (95% partner in Kamla Landmarc) to smoothly execute construction of the building. It appears that the original three occupiers of flats are opposed to carrying out any additional construction on the plot. It appears that originally only seven storey building was proposed to be constructed and the developer got sanctioned plans for construction of five additional floors. This action of the Developer was sought to be challenged by three original flat occupiers by filing Commercial Suit (L) No.970 of 2018. The plaint in the said suit however got rejected by order

dated 22nd February, 2019 after noticing that the suit was lodged in the name of the society and persons verifying the plaint did not have authority to do so. The society, whose affairs are managed by the developer, has not challenged the developer's act of putting up 5 additional floors and the developer has already ensured that the society did not come in its way of putting up additional construction. The attempt made by three flat owners of original structure of stopping the developer from doing so was thwarted by challenging their authority to represent the society. The Developer has already achieved part of his intentions by completing construction of twelve slabs at the site. Mr. Kanade was repeatedly heard stating across the bar that the Developer is contemplating addition of two more floors to the building to accommodate the members of the society who do not own any flat. Thus, retention of the Petitioners as members of the managing committee of the society is ensured only for the purpose of permitting the developer to smoothly carry out additional construction without any obstruction from the society.

37. In my view, therefore, the principle enunciated by this Court in judgment in ***Sharadchandra T. Rane*** would squarely apply, where it is held that persons not owning any flats or units in society's building cannot manage its affairs. Mr. Kanade has made attempt to distinguish the judgment in ***Sharadchandra T. Rane*** by submitting that the same is rendered in the unique facts of that case, where the concerned members of the society were allotted flats in some other buildings and were still desirous of participating in the society's election process. In my view, whether it is right to participate in the election or right to remain as a member of the managing committee, the underlying principle is management of affairs of

the building of the society. Therefore, the same principle would apply when it comes to the continuation as managing committee member of the society, who would ultimately seek to manage affairs of the building of the society, in which they do not even own any flat.

38. It is on account of the above unique facts and circumstances of the present case, where persons not owning any flat in society's building are managing its affairs coupled with the fact that one of the managing committee members is also a developer himself, that this Court is inclined to make a departure from the ordinary course of relegating the contesting Respondents to the remedy of Section 154B-9 of the MCS Act. What must also be borne in mind is that the impugned orders would result only in removal of the Petitioners as managing committee members of the society. Though some observations may be made in the impugned orders about their right to remain as members of the society, so far no order is passed removing Petitioners as members of the society. Mr. Jagtiani has submitted independent proceedings are already filed for seeking ouster of Petitioners as members of the society from membership of the society. The issue of validity of their membership can be considered and decided in such proceedings. In case such proceedings are not already filed, the same can always be filed by the contesting Respondents, if they believe that in addition to removal from the managing committee, Petitioners cannot also remain as members of the society. As of now, I do not find any error on the part of the Deputy Registrar in ensuring that Petitioners are immediately removed from the managing Committee of the society. They do not have any semblance of right as of now in respect of any flat in the society's building and it is appropriate that only those persons who own or have a

right in a flat in society's building manage the affairs of the society. Petitioner-Parvath Shetty is developing the building and also is a managing committee member without owning any flat in society's building. Tomorrow, if the developer fails to obey obligations under the development agreement, whether Mr. Shetty would act against himself by passing a resolution of the society? The answer to my mind appears to be in emphatic negative. Commission of acts prejudicial to the interests of the society is thus writ large. It is therefore appropriate that the Petitioner are instantaneously removed as managing committee members and make a way for flat owners to manage the affairs of the society.

39. Petitioners have contended that 'prior' approval by MHADA to the membership cannot be a reason for invoking the jurisdiction under section 78A of the Act. They have relied upon Resolution dated 6th May, 2010 adopted by MHADA in support of their contention that MHADA's flats can be transferred upon expiry of period of five years without any permission from MHADA. Perusal of Resolution dated 6th May, 2010 adopted by MHADA would indicate that the same is in respect of cancellation of fees for transfer of tenements if period of five years has elapsed from the date of allotment. In the present case, no flat is allotted to the Petitioners. The case does not involve transfer of tenement. Therefore, I do not see any reason why Resolution dated 6th May 2010 can have any remote application to the present case.

40. After considering the overall concentrers of the case, I am of the view that the technical objection sought to be raised by the Petitioners about the scope of inquiry under provisions of Section 78A(1)(b) of the MCS Act

would not come to their assistance, where they do not have any right to manage the affairs of the society. This Court is ultimately exercising corrective jurisdiction under Article 227 of the Constitution of India over orders by the Deputy Registrar, Divisional Joint Registrar and the Hon'ble Minister. I have unable to notice any gross error of law or flagrant exercise of power by the said authorities warranting interference in exercise of jurisdiction under Article 227 of the Constitution of India. Also considering the facts of the case and particularly the objective behind remaining as managing committee members for assisting the developer, I am not inclined to exercise the extraordinary jurisdiction. The impugned orders ultimately ensures that the society's affairs are not managed by outsiders, who are in the coterie of the developer and are actually managed by the flat owners. Therefore, even if some departure from statutory provisions was to be noticed (which is actually not noticed), the orders need not be set aside when the ultimate objective behind taking the corrective action is found to have been achieved. It is well settled principle of law that the supervisory jurisdiction is not to correct every error or every legal flaw when the final finding is justified or can be supported. In this regard, reliance by Mr. Jagtiani on judgment of the Apex Court in ***Garment Craft Vs. Prakash Chand Goel*** (supra) is apposite in which the Apex Court has held as under :

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. **The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported.** The High Court is not to substitute its own

decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

(emphasis added)

41. Therefore even though the impugned orders are sought to be attacked on the ground that the authorities have touched upon the issue of membership of Petitioner while deciding the proceedings for their removal as members of managing committee, I am not inclined to exercise the jurisdiction under Article 227 of the Constitution of India after being satisfied that the whole scheme is ingeniously engineered to ensure smooth development of the building as per desires of the developer without creation of any hurdle by the society. The managing committee members of the society, who do not have any flat in its building, instead of taking care of interests of the society, are apparently assisting the developer, who again is one of the committee members. The ultimate result of the impugned orders is that the flat owners would manage affairs of the society. No serious prejudice is caused to the Petitioners by their removal as members of the committee, who can defend their membership of society as and when the same is questioned. They are also free to agitate their remedies to secure flats in the building by initiating proceedings against the developer. It is another matter that initiation of such proceedings would virtually amount to Mr. Parvath Shetty suing himself for allotment of flat in society's building. He has already embroiled himself in the Prevention of Money Laundering Act proceedings where 5 flats in the society's building are

attached. In the light of this factual background the least that the Petitioners must suffer is their removal from managing committee of the society. It is however clarified that the issue relating to validity of membership of society shall be independently decided without being influenced by any observations made in the judgment.

42. The impugned orders are thus unexceptionable, and I do not find any valid ground to interfere in the same. Both writ petitions are devoid of merits and are accordingly dismissed with no order as to costs.

(SANDEEP V. MARNE, J.)

43. After the judgment is pronounced, Mr. Kanade would pray for continuation of interim orders dated 8 April 2025 and 17 April 2025 for a period of eight weeks. The request is opposed by Mr. Jagtiani. Considering the nature of findings recorded in the judgment, I am not inclined to continue the interim orders any further. Request for continuation of interim orders is accordingly rejected.

(SANDEEP V. MARNE, J.)

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