

(2018) 08 BOM CK 0099

Bombay High Court

Case No: Writ Petition No. 5521 Of 2005

Maitri Park Co-Operative
Housing Society Ltd.

APPELLANT

Vs

Virendra Khanna And Ors

RESPONDENT

Date of Decision: Aug. 24, 2018

Acts Referred:

- Maharashtra Co-operative Societies Act, 1960 - Section 79, 79(1), 79(1), 79(2), 79(2)(a), 79(2)(b), 152, 799(2)
- Constitution of India, 1950 - Article 227

Hon'ble Judges: R.D. DHANUKA, J

Bench: Single Bench

Advocate: Sushma Singh, Priyanka Raul, .Rita D.Bhatia, Mohammed Manisha, J.A.Madane

Final Decision: Dismissed

Judgement

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the orders dated 12th July, 2005 and 21st

October, 2002 passed by the Secretary (Co-operation and Marketing), Government of Maharashtra, Mantralaya, Mumbai and by the Deputy Registrar,

Co-operative Societies, 'M' Ward, Mumbai respectively.Â Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner is a co-operative society incorporated under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short the said

MCS Act).Â The respondent no.1 is an associate member of the petitioner society. Mr.Kamal Kumar Khanna is the primary member and is

occupying the flat situated on the 1st floor of Block no.B/13.

3. The buildings in the petitioner's society were constructed between 1966 and 1972.Â There were about 44 structures in the petitioner society out of

which there are 32 buildings having only ground plus one structure.Â The rest of the structure are multi storeyed buildings having ground plus 2 to 4

floors.Â The ground plus one structures have four flats each.Â Two flats are on the ground floor and the remaining flats are on the first floor of the

said ground plus one structure buildings.Â It is the case of the petitioner that since the inception of the incorporation of the society, ground floor

occupants use the open space outside their flats as gardens and the first floor occupants use the terrace above their houses exclusively save and

except the common water tank on the terrace.Â The terraces are locked and maintained by the occupants on the 1st floor.

4. Insofar as the structure in question is concerned, the said structure of block/building no.13 is a ground plus one structure having four flats, two on

the ground floor and two on the first floor.Â One of the flat on the ground floor is occupied by Mr.Kamal Kumar Khanna who is a relative of the 1st

respondent and has been occupying the said flat since 1977.Â The ground floor members have been permitted by the General Body of the petitioner

society by its resolution dated 14th February,1988 to use the garden space outside their houses.

5. It is the case of the petitioner that the members residing on the first floor and more particularly the said Mr.Kamal Kumar Khanna has illegally

locked the terrace above his house by putting iron grills and a lock and has been exclusively using the said portion and does not permit the members on

the ground floor to have access to the terrace.Â It is the case of the petitioner that though the terrace is the property of the petitioner society, the said

Mr.Kamal Kumar Khanna has illegally usurped the said property of the society and the same has been in his illegal, continuous and exclusive use,

occupation and possession of the said portion since 1977.

6. It is the case of the petitioner that the petitioner does not collect any charges towards repairs and maintenance of the buildings of the petitioner.Â

The members of the petitioner themselves maintain their own flats i.e. the ground floor members maintain their flats and the open spaces and gardens

outside their house whilst the members residing on the 1st floor maintain their flats and the terrace above their houses.

7. It is the case of the petitioner that the general body meeting of the petitioner had passed a resolution on 7th February, 1993 and had approved

creation of a repair and maintenance fund under bye-law 13 of the model bye-laws and had also approved an amendment to bye-law no.162.Â Â By

the said resolution details of the expenses to be incurred for repair and maintenance were specified as well as the contributors to the repair were

specified as well as contributors to the repair were also specified.Â The said amendment however was not approved by the Registrar and thus could

not be implemented.Â The buildings in the petitioner society are very old.Â The members are demanding that the repairs worth lacs of rupees be

carried out whilst contributing a few hundred rupees towards the repair and maintenance fund.

8. The petitioner society passed a resolution on 1st October,2002 of the general body and approved the withdrawal of the building repair and

maintenance fund and directed that the amounts collected from members on account of buildings repair and maintenance fund be refunded.Â It is the

case of the petitioner that in accordance with the said resolution, all the amounts collected by the petitioner from the members towards building repairs

and maintenance fund were refunded to each of them including the said Mr.Kamal Kumar Khanna.Â The said Mr.Kamal Kumar Khanna accepted

the said refund of the amount of Rs.2,400/from the petitioner.Â It is the case of the petitioner thatÂ the said Mr.Kamal Kumar Khanna however did

not carry out repairs and did not keep his flat in good condition.

9. There was extensive leakage from his toilet and kitchen into the ground floor flat.Â He also failed and neglected to repair the terrace above his flat

although he is in exclusive possession thereof.Â He applied for permission to the petitioner to put up a monsoon shed on the terrace which was

granted by the petitioner in each year.Â The said Mr.Kamal Kumar Khanna thereafter applied for permission from the Municipal Corporation to

cover the terrace with asbestos sheets during monsoon.Â There was thus no leakage from the terrace to the flat of the said Mr.Kamal Kumar

Khanna.

10. It is the case of the petitioner that the respondent no.1 who is a relative of the said Mr.Kamal Kumar Khanna associate member however

approached the Deputy Registrar, Co-operative Societies to force the petitioner to carry out the repair work of the terrace at its own costs.Â The

respondent no.4 accordingly addressed two letters to the petitioner society calling upon the petitioner to explain as to why the terrace above the flat of

the Mr.Kamal Kumar Khanna was not repaired.Â The petitioner vide its letters dated 1st January,2002 and 17th January, 2002 informed the

respondent no.4 that the petitioner did not collect any charges from its members towards repair and maintenance of the buildings and that the

petitioner was willing to carry out the necessary repairs if the respective members would pay for the same.Â The petitioner offered to carry out

repairs upon receipt of payment from the 1st respondent and upon receipt of possession of the terrace by the petitioner along with an undertaking from

the said Mr.Kamal Kumar Khanna not to lock the terrace in future.

11. On 3rd February, 2002, the respondent no.4 issued a direction to the petitioner under section 79 of the Maharashtra Co-operative Societies Act,

1960 directing the petitioner to carry out the repairs of the terrace above the flat of the said Mr.Kamal Kumar Khanna forthwith.Â The petitioner

replied to the said letter dated 3rd February,2002 on 20th February, 2002 and contended that the petitioner did not collect funds for carrying out repairs

and thus it was not possible for the petitioner to carry out repairs.Â Â The petitioner however once again offered to repair the terrace subject to the

respondent no.1 handing over possession of the terrace and paying the necessary charges for repairs.

12. The respondent no.4 by his letter dated 15th July, 2002 called upon the office bearers of the petitioner to remain present personally on 13th

August,2002 and to explain as to why the repair work had not been carried out by the petitioner. The office bearers of the petitioner however could

not attend the office of the respondent no.4 on that day.

13. The respondent no.4 thereafter sent another letter dated 14th August,2002 to the petitioner calling upon them to remain present on 27th

August,2002.Â The said letter was received by the petitioner at 03.45 p.m. on 27th August,2002 and thus the petitioner could not attend the office of

the respondent no.4. The petitioner vide its letter dated 28th August,2002 informed the respondent no.4 that the letter dated 14th August,2002 was received by the petitioner only at 03.45 p.m. on 27th August,2002 and requested for a fresh date.

14. The respondent no.4 thereafter addressed an undated letter in the month of September 2002 which was received by the petitioner on 2nd October,2002 calling upon the office bearers of the petitioner to remain present within 15 days of the receipt of the said letter and to give their explanation and threatened to appoint an authorized representative to carry out the work at the cost of the petitioner if the proper explanation was not given by the petitioner society.

15. The petitioner vide its letter dated 13th October,2002 to the respondent no.4 once again reiterated its stand that since the petitioner did not collect funds from the members towards repair and maintenance, the petitioner was not in a position to carry out repairs unless the member concerned paid for the same and would handover the possession of the terrace to the petitioner.

16. The respondent no.4 thereafter passed an order on 21st October,2002 appointing the respondent no.1 as an authorized agent of the respondent no.4 to carry out repair work and to recover the amount spent by him from the funds of the petitioner.

17. Being aggrieved by the said order dated 21st October,2002 passed by the respondent no.4, the petitioner filed appeal before the Divisional Joint

Registrar (Appeals). By an order dated 11th December, 2002, the respondent no.3 initially passed an order of status-quo pending the hearing and

final disposal of the said appeal preferred by the petitioner. It is the case of the petitioner that inspite of the said status-quo order passed by the

respondent no.3, the respondent no.1 allegedly carried out repairs to the terrace, internal/external walls of the flat, bathroom and toilets, bed-rooms

along with hall and kitchen and also painting of his entire flat from inside and outside.

18. The respondent no.1 by his letter dated 15th February, 2003 informed the petitioner that he had completed the repairs on 26th December,2002 and

had alleged to have spent a sum of Rs.1,82,993/- on repairs, Rs.6,945/-, on temporary monsoon shed and demanded a total sum of Rs.1,82,993/- from the petitioner.Â On 23rd January, 2004, the learned Divisional Joint Registrar passed an order setting aside the order dated 21st October,2002 passed by the respondent no.4 and remanded the matter to the respondent no.4 for hearing afresh and for passing an order.

19. The respondent no.1 preferred a Revision Application No.205 of 2004 against the said order dated 23rd November,2004 passed by the learned Divisional Joint Registrar before the respondent no.2 i.e. the Secretary, (Co-operation and Marketing).Â It is the case of the petitioner that the respondent no.2 had called for hearing on two or three occasions when their advocate attended but the respondent no.2 was not available and the matter was adjourned.Â The respondent no.2 however passed an order on 30th June, 2005 which was received by the petitioner on 12th July, 2005 thereby allowing the revision application filed by the respondent no.1 and setting aside the order passed by the respondent no.3 and confirmed the order dated 21st October,2002 passed by the respondent no.4.Â Being aggrieved by theÂ said order dated 12th July, 2005 passed by the respondent no.2, the petitioner referred this writ petition under Article 227 of the Constitution of India.

20. Ms.Sushma Singh, learned counsel appearing for the petitioner invited my attention to various annexures annexed to the writ petition and would submit that section 79(1) of the MCS Act empowers the Registrar to issue direction in respect of the Act of the Society whereas section 79(2) empowers him to take action if direction issued by himÂ under section 79(1) are not complied with.Â She submits that the directions sought by the respondent no.1 to direct the petitioner society to carry out repairs at its own cost did not fall within the ambit of section 79(1).

21. It is submitted by the learned counsel for the petitioner that in any event the respondent no.4 could not have appointed the respondent no.1 as his authorized agent under section 79(2) of the MCS Act for the purpose of carrying out repairs and without ascertaining whether there was any need for repairs on the terrace as there was no leakageÂ in the flat of the respondent no.1. In her alternate submission, it is submitted that the repair, if any,Â

of a terrace even if considered for 832 sq. ft., the cost of such repair could not have been more than Rs.25,000/- as against the demand of the respondent no.1 at Rs.1,82,993/- for carrying out the alleged repairs. She submits that the entire bill submitted by the respondent no.1 was fictitious and exorbitant.

22. The respondent no.4 did not supervise whether in fact any such repairs were at all necessitated or were actually carried out by the respondent no.1. She submits that though there was an order of status-quo in force granted by the learned Divisional Joint Registrar on 11th December, 2002, in breach of the said status-quo order, the respondent no.1 had allegedly carried out the repairs not only of the terrace but also the flat from inside and outside which was not contemplated even otherwise under the order passed by the respondent no.4 permitting the respondent no.1 to carry out repairs. Learned counsel for the petitioner invited my attention to the said bill submitted by the respondent no.1 to the petitioner society for reimbursement and would submit that the said alleged bill itself would indicate that the same was not only in respect of the repairs allegedly carried out on the terrace but also other repairs allegedly carried out in the flat occupied by the respondent no.1.

23. It is submitted by the learned counsel that in view of the resolution already passed by the petitioner society thereby directing withdrawal of the building repair and maintenance funds and directing that the amounts collected from the members on account of the building repairs and maintenance funds be refunded and had as a matter of record refunded such amount by the petitioner to Mr.Kamal Kumar Khanna, it was not the responsibility of the petitioner to carry out any such repairs to the terrace or to the flat of the building in question.

24. Learned counsel for the petitioner placed reliance on the judgment of this Court in case of *Indrasan Co-operative Housing Society Ltd. vs. State of Maharashtra & Ors.* (2015) 1 ALL MR 50, in support of the submission that powers of Registrar under section 79(2) of the MCS Act cannot be invoked for adjudicating or issuing any directions in respect of which there is a dispute between the parties and such provision can be invoked only

relating to the maintenance of account of the society in proper form and not for directing the petitioner society to carry out any repairs on the

application of any member or otherwise. She also placedÂ reliance on the judgment of this Court in case of Pravinkumar R. Salian vs. Chief Minister

and Minister of Cooperation, Mumbai & Ors. (2004) 2 Mah.LJ 12 and in particular paragraph 6.

25. Ms. Bhatia, learned counsel appearing for the respondent no.1 on the other hand invited my attention to various annexures to the writ petition and

also tendered a compilation of documents for consideration of this Court in support of her submission that it was the obligation on the part of the

petitioner to carry out repairs and not the member of the society. The member of the flat had repeatedly called upon the petitioner to carry out such

repairs which the petitioner failed. The member was thus entitled to approach the authority under section 79(2) of the MCS Act to issue directions to

the petitioner society to carry out repairs and if such directions are not complied with by the petitioner, then toÂ appoint an officer to carry out such

directions issued by the Deputy Registrar. She submits that in this case in spite of the directions issued to the petitioner to carry out repairs on the

terrace of the flat in question, the petitioner did not carry out repairs andÂ thus the Deputy Registrar was justified in appointing the respondent no.1

as an authorized agent to carry out repairs on the terrace at the cost of the petitioner. She submits that such powers vest in the Deputy Registrar

under section 79(2) of the MCS Act.

26. In support of this submission, learned counsel for the respondent no.1 placed reliance on the following judgments :-

(i). Unreported judgment of this Court delivered on 19th January, 2011 in Writ Petition No.514 of 2011 and other connected matters in case of

Surendra Digamber Juvekar vs. Devtirth CHS Ltd. & Ors.,

(ii). Unreported judgment of this Court delivered on 28th June, 2011, in Letters Patent Appeal No.148 of 2011, in case of Sadashivrao Mandlik Kagal

Taluka Sahakari Sakhar Karkhana Ltd. vs. The Regional Joint Director (Sugar), Kolhapur & Ors.,

(iii). Unreported judgment of this Court delivered on 28th June, 2006 in Writ Petition No.7231 of 2002, in case of Humble Home Co-op. Hsg. Soc. Ltd.

vs. Shri Sham Balani & Anr.,

Â (iv). The judgment of this Court in case of The Venus Co-op. Housing Society & Anr. vs. Dr.J.Y. Detwani & Ors. 2003(3) ALL MR 570,

(v). Unreported judgment of the Division Bench of this Court in Writ Petition No.446 of 2007, in case of Kapil Bittan Barai & Anr. vs. State of

Maharashtra & Ors.

(vi). The judgment of this Court in case of Indrasan Co-operative Housing Society Ltd. vs. The State of Maharashtra & Ors., 2015(1) ALL MR 50.

27. Learned counsel for the respondent no.1 also relied upon the directives issued by the State Government on 15th October, 2011 to all the societies

informing that the directives issued by the State Government under section 79(A) of the MCS Act are applicable to all the Co-operative Housing

Societies. Learned counsel for the respondent no.1 also placed reliance on some of the correspondence exchanged between the respondent no.1 and

the petitioner society regarding repairs to the terrace of the flat occupied by the respondent no.1.

28. Learned counsel appearing for the respondent no.1 distinguished the judgments relied upon by Ms.Singh on the ground that the facts before this

Court in both the judgments were totally different. She submits that even if the respondent no.1 is an associated member, the respondent no.1 was

entitled to file such proceedings before the Deputy Registrar for seeking appropriate directions under section 79(2) of the MCS Act.

29. It is submitted by the learned counsel that some of the portion of the flat was also repaired by the respondent no.1 through a contractor who had

submitted his bill. The respondent no.1 has deducted some amount from the total bill submitted by the said contractor towards repairs carried out in the

flat. The respondent no.1 has not applied for reimbursement of the entire amount from the petitioner as sought to be canvassed by the petitioner. It is

submitted that the bill thus submitted by the respondent no.1 for seeking reimbursement of the repairing charges was authentic and was for the amount

spent by the respondent no.1 for carrying out such repairs which amountÂ was reimbursable by the petitioner society.

30. It is submitted that the findings of fact rendered by the learned Secretary (Co-operation & Marketing) being not perverse cannot beÂ interfered

with by this Court in this writ petition under under Article 227 of the Constitution of India. She submits that the respondent no.1 has already suffered in the hands of the petitioner in view of the petitioner not having carried out its obligation to carry out repairs and thus this Court shall not interfere with the impugned order passed by the learned Secretary (Co-operation & Marketing).

31. Ms.Sushma Singh, learned counsel for the petitioner in rejoinder submits that several documents which are now sought to be relied upon by the respondent no.1 before this Court forming part of the compilation tendered by her were not produced before the authorities below and thus cannot be allowed to be relied upon and that also at this stage during the course of arguments at the final hearing stage. She submits that all the judgments rendered and relied upon by the respondent no.1 through his counsel are totally irrelevant and does not apply to the facts of this case at all. She submits that on the the other hand the judgments referred to and relied upon by the petitioner are directly applicable to the facts of this case and are binding on this Court.

REASONS AND CONCLUSIONS :-

32. It is not in dispute that on 7th February 1993, the General Body of the petitioner had passed a resolution approving creation of repair and maintenance fund under bye-law 13 of the Model Bye-laws and has also approved an amendment to bye-law No.162.

Under the said amendment, it was proposed that repair and maintenance of the property of the society and contributions of the members towards such repair and maintenance shall be done by the society on various conditions. It was proposed that repair and maintenance of the terraces and parapet walls shall be done by the society and members shall contribute equally to the same building-wise. The said amendment to the byelaw was not approved by the Registrar of Co-operative Societies.

33. It is also not in dispute that on 1st October 2000, in the General Body Meeting of the petitioner, a resolution was passed to the effect that all amounts collected by the petitioner from the members towards 'repair and maintenance fund' were to be refunded to each of the

member who had made such contributions including the said Mr.Kamal Kumar Khanna through whom the respondent no.1 claims alleged rights

in the part of the block No.B/13 in Maitri Park Co-operative Housing Society Ltd. The petitioner accordingly refunded a sum of

Rs2,400/- to Mr.Kamal Kumar Khanna which amount was accepted by him.

34. A question that arises for consideration of this Court is whether it was a duty or obligation of the petitioner to carry out repair in

any portion of block/building and if so, at whose costs in view of the resolution passed by the General Body Meeting of the petitioner held on

1st October 2000. The question that also arises for consideration of this Court as to whether the respondent no.4 i.e. Deputy Registrar,

Co-operative Societies could issue any direction by exercising powers under Section 79(2) of the MCS Act to the petitioner to carry out

repair in the portion of the block No.B/13 in the said building at the costs of the petitioner and failing which could have appointed the

respondent no.1 as an authorized agent who had applied for such repairs to execute the order passed by the respondent no.4 or

not.

35. It is the case of the petitioner that in view of the resolution dated 1st October 2000 passed in the General Body Meeting of the petitioner

society, all amounts collected by the petitioner from its members towards repair and maintenance fund had been refunded and thus it

was not an obligation of the petitioner to carry out any repairs. The repairs, if any, were required to be carried out by the members

themselves at their own costs.

36. A perusal of the record further indicates that when the respondent no.1 applied to the respondent no.4 for seeking appropriate directions

against the petitioner to carry out repairs in response to various letters addressed by the respondent no.4, it was clearly mentioned by the

petitioner in its reply that there was no amount towards repairs collected by the petitioner after passing a resolution dated 1st October

2000 and thus the repair, if any, was required to be carried out by the members themselves at their own costs. The respondent no.4

however,Â did not consider any contention raised by the petitioner in the various correspondenceÂ andÂ passed anÂ ex-parte order against the petitioner thereby appointingÂ the respondent no.1Â as an authorized agent under Section 79(2) of the MCS Act.

37. The Divisional Joint RegistrarÂ however by an order dated 23rd JanuaryÂ 2004Â was pleased to set aside the order passed by the respondent no.4 and remandedÂ the matter back to the respondent no.4 for passing a fresh order after hearing both the parties.Â Â The respondent no.2Â howeverÂ by an order dated 23rdÂ NovemberÂ 2004 hasÂ set aside the order passed by the Divisional Joint RegistrarÂ on 23rd JanuaryÂ 2004Â and upheld the direction issued by the respondent no.4.

38. A perusal of the correspondenceÂ exchanged between the petitioner andÂ the respondent no.1Â and also the respondent no.1 andÂ the respondent no.4 indicates that the respondent no.1 had proposed repairs and had suggestedÂ that costs of repairsÂ would be contributedÂ by other occupantsÂ of the said block.Â Â The respondent no.1 and other occupants also appearÂ to have contributedÂ certain amountsÂ payable to the ContractorÂ for carrying outÂ repairs.Â Â The respondent no.4 did not verify the quotation, if any,Â produced by the respondent no.1Â for carrying out repairs.

39. At the first instance, in my view,Â the respondent no.4Â could not have appointed the respondent no.1 as an authorized agentÂ on his behalf sinceÂ he was a complainantÂ and could not have been given a free hand for carrying outÂ repairs to recoverÂ the amountÂ as he would demand from the petitioner society.Â Â Even if the respondent no.4Â could have appointed an authorized officer,Â suchÂ authorized officerÂ ought to have beenÂ an independent officer and not a party who was a complainantÂ before the respondent no.4 in the matter having interest inÂ the subject matter of complaint.

40. The respondent no.2Â has also not considered various submissions and contentionsÂ raised by the petitioner before him and has upheld the directions issued by the respondent no.4Â while setting aside the order passed by the Divisional Joint RegistrarÂ on 23rd JanuaryÂ 2004.

41. Learned counsel appearing for the petitioner and the respondent no.1 made rival submissions on the issue as to whether the respondent no.4 could have at all issued such directions purportedly exercising the powers under Section 79(2) of the MCS Act to the petitioner society to carry out repairs in the facts and circumstances of this case or otherwise.

42. Learned counsel for the petitioner in support of her submission that no such directions could be issued by the respondent no.4 under

Section 79(2) of the MCS Act placed reliance on the following judgments of this Court :-

(i) Indrasan Co-operative Housing Society Ltd. Vs. The State of Maharashtra & Ors., 2015(1) ALL MR 50 and in particular paragraphs

8 and 9,

(ii) Pravinkumar R. Salian Vs. Chief Minister and Minister of Co-operation, Mumbai & Ors., 2004(2) Mh.L.J. 12 and in particular paragraph

6 thereof.

43. This Court in the case of Indrasan Co-operative Housing Society Ltd. (supra) has held that if the Society fails in taking any action

which is directed by the Registrar in the matter of accounts, the Registrar may impose or through a person authorized by him may take such action at

the expense of the Society and such expense shall be recoverable from the Society as arrears of land revenue. It is held that the said provision

however cannot be invoked for adjudicating or issuing any direction in respect of which there is a dispute between the parties. The said provision only

relates to the maintenance of the accounts of the Society in a proper form. The power of the Registrar under the said provision can be said to be

administrative, and can be invoked in the circumstances mentioned therein. This Court in the said judgment has set aside the directions issued by

the Deputy Registrar under Section 79(2) of the MCS Act to the society to delete the amount due towards illegal use of terrace and

penalty for alleged obstruction of repair work of the terrace from the maintenance bill of one of the members.

44. This Court in the case of Pravinkumar R. Salian (supra) has held that the Registrar while exercising powers under Section 79 (2) of the

MCS Act has only to seek enforcement of performance of obligations of the society in relation to receipts and expenditure, maintenance of books of

accounts and assets and liabilities thereof but such powers do not relate to any disciplinary action against an employee of a co-operative society.

45. Division Bench of this Court however in the case of *Bhandara Zilla Parishad & Wa Panchayat Samiti Karamachari & Sahakari Sanstha Ltd.*,

Bhandara Vs. Divisional Joint Registrar, Co-operative Societies, Nagpur & Ors., 2015(4) Mh.L.J. 409 has construed the powers of the

Registrar under Sections 79(1) and 79(2) of the MCS Act and has held that the powers under sub-section (1) is an enabling provision. It

empowers the Registrar/respondent no.1 to issue directions to keep proper books of accounts, etc. Sub-section (2) is a provision wider in sweep than

sub-section (1) & provides a measure if the Society does not obey the direction. It envisages not only a direction under its sub-section (1) but of other

directions or commands to any society to take any action issued under the other enabling provisions of the Maharashtra Cooperative Societies Act or

Rules or Bye-laws. It is held that a case of non-implementation of a direction issued by the Registrar/respondent no.1 under Section 79(1) is

covered under later part of sub-section (2) while its opening part refers to any directions issued within the four corners of the Cooperative Societies

Act or then under any Rules or Byelaws made thereunder. Division Bench of this Court has taken a different view than the view taken by the

learned Single Judges of this Court in the cases of *Indrasan Co-operative Housing Society Ltd. (supra)* & *Pravinkumar R. Salian (supra)* in

so far as the powers of the Registrar under Section 79(2) of the MCS Act are concerned.

46. I am respectfully bound by the judgment of the Division Bench of this Court in the case of *Bhandara Zilla Parishad & Wa Panchayat*

Samiti Karamachari & Sahakari Sanstha Ltd., *Bhandara (supra)* and more particularly on the issue as to whether the Registrar can take an

action at the expense of the society if such action is not taken by the society which is required to be taken under the Act or Rules or the Bye-

laws or to comply with the order made under Sub-section (1) or (1A) of Section 79 of the MCS Act.

47. In my view, the Registrar of Co-operative Societies is empowered to take an action against the society under Section 79(2) of the MCS Act if such an action is required to be taken by the society under the MCS Act or Rules or Bye-laws or to comply with any order made under Sub-section (1) or (1A) of Section 79 of the MCS Act. The Registrar is empowered to take an action at the expense of the society and such expense can be recovered from the society as if it were an arrear of land revenue. The Registrar may take further action under Section 79(3) of the MCS Act as contemplated therein.

48. This Court shall now consider whether the petitioner society had not taken any action as contemplated under the MCS Act or Rules or Bye-laws or to comply with the order made under Sub-section (1) or (1A) of Section 79 of the MCS Act or not. In so far as the action under Sub-section (1) or (1A) of Section 79 of the MCS Act is concerned, both those provisions relate to the maintenance of accounts, filing of returns etc. and has nothing to do with the obligations of the petitioner society, if any, to carry out repairs in respect of the tenements occupied by the members.

49. In so far as Sub-section (2) of Section 79 is concerned, learned counsel for the respondent no.1 could not point out any provisions of the MCS Act or the MCS Rules or the Bye-laws of the petitioner society which contemplated any duty or obligation on the part of the petitioner society to carry out repairs in the block/building partly occupied by the respondent no.1 contrary to the resolution passed by the petitioner society. On the contrary, it is an admitted position that in the General Body Meeting of the petitioner society held on 1st October 2000, it was resolved that the petitioner shall return the amounts collected from its members towards repair and maintenance fund which resolution was admittedly implemented. The said Mr. Kamal Kumar Khanna was returned a sum of Rs.2,400/- paid by him towards the said repair and maintenance fund and had accepted the said amount unconditionally. The said resolution passed in the General Body Meeting of the petitioner held on 1st October 2000 was admittedly not impugned by any of the members and thus binding on the said

Mr.Kamal Kumar Khanna and other members of the society. The respondent no.1 is claiming through the said Mr.Kamal Kumar Khanna and thus was bound by the said resolution.

50. The petitioner has taken such stand consistently in all the correspondence addressed between the petitioner and the respondent no.1 and also between the petitioner and the respondent no.4. In my view, the petitioner was thus not required to carry out repairs in the block/building in respect of consisting of ground plus one structure and thus the repairs, if any, were thus required to be carried out by the members themselves at their own costs in view of the resolution passed by the petitioner society. Even if the society would have carried out such repairs as directed by the respondent no.4, such amount was liable to be reimbursed by the concerned members in a particular ratio.

51. The documents forming part of the compilation tendered by the respondent no.1 would indicate that a letter was addressed jointly by all the occupants in respect of block B/13 in the building to contribute a particular amount. It is not the case of the respondent no.1 that the said Contractor carried out the repairing work has not been paid by the respondent no.1 or other contributories till date. In these circumstances, in my view, the respondent no.4 could not have directed the petitioner to carry out repairs of the block B/13 in the building partly occupied by the respondent no.1 and other occupants. Be that as it may, the respondent no.4 could not have appointed the respondent no.1 as an authorized agent for carrying out such repairs.

52. During the course of arguments, learned counsel for the petitioner society strongly raised a dispute in respect of the amount demanded by the respondent no.1 based on the alleged bill submitted by the Contractor. It is the case of the petitioner that the respondent no.1 has not only claimed for the repairs to the terrace and other structures but has also got his flat repaired and has also claimed costs of repairs in respect of the said flat. In my view, such demand by the respondent no.1 for repairs allegedly carried out in his flat also from the

petitioner society even otherwise was totally untenable. Learned counsel for the respondent no.1 could not dispute before this Court that the respondent no.1 had carried out repairs and other ancillary work in his flat also. The respondent no.2 did not consider this crucial aspect in the impugned order at all.

53. In view of the aforesaid situation, in my view, the respondent no.4 could not have directed the petitioner to carry out repairs by exercising powers under Section 79(2) of the MCS Act and to authorize the respondent no.1 to recover the alleged expenses from the petitioner. The petitioner did not commit any breach of any provision of the MCS Act or Rules or Bye-laws of the petitioner society. In my view, since there was a bonafide dispute raised by the petitioner before the respondent no.4 about their alleged obligation and liability to carry out repairs in the block/building occupied by the respondent no.1 and other occupiers in view of the resolution passed in the General Body Meeting of the petitioner society on 1st October 2000 and various other resolutions, such dispute between the petitioner and the respondent no.1 could not have been adjudicated upon by the respondent no.4. The powers of the Registrar under Section 79(2) of the MCS Act is administrative and contentious and the disputed facts cannot be adjudicated upon by the Registrar by exercising powers under Section 79(2) of the MCS Act.

54. In so far as the judgment of this Court in the case of Surendra Digamber Juvekar VS. Devtirth CHS Ltd. & Ors. (supra) relied upon by the learned counsel for the respondent no.1 is concerned, it is held in the said judgment that Section 79 is divided in three parts. Sub-section (1) empowers the Registrar to give directions to the society which directions have to be complied with ; Sub-section (2) reveals that the said direction has to be complied either within the time, provided under the Act, the Rule or the Bye-laws or the order and Sub-section (3) provides that when no time is provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing. In my view, the said judgment would not assist the case of the respondent no.1.

55. In so far as the judgment of the Division Bench of this Court in the case of *Sadashivrao & Mandlik Kagal Taluka Sahakari Sakhar*

Karkhana Ltd. (supra) relied upon by the learned counsel for the respondent no.1 is concerned, Division Bench of this Court has held that

before passing any order or taking any action under Section 79(2)(a) or (b) of the MCS Act, the principles of natural justice is required to be

followed by giving an opportunity of hearing and asking the explanation from the society as to why an action should not be taken against the

society. In my view, the said judgment would assist the case of the petitioner and not the case of the respondent no.1.

56. In this matter, the petitioner had brought to the notice of the respondent no.4 that the notice issued by the respondent no.4 was a very short

notice and thus the petitioner could not have remained present before the respondent no.4 on the date fixed by the respondent no.4. The

respondent no.4 however proceeded with the matter and decided the proceedings ex-parte in violation of principles of natural justice. The

Divisional Joint Registrar was justified in setting aside the order passed by the respondent no.4 and in remanding the matter back to the

respondent no.4. The respondent no.2 however illegally has set aside the order passed by the respondent no.4. The principles of law laid down

by this Court in the said judgment in the case of *Sadashivrao & Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd. (supra)* would

apply to the facts of this case.

57. In so far as the judgment of this Court in the case of *Humble Home Co-op. Hsg. Soc. Ltd. Vs. Shir Sham Balani & Anr. (supra)*

relied upon by the learned counsel for the respondent no.1 is concerned, the said judgment even does not remotely apply to the facts of this

case and would not assist the case of the respondent no.1. Similarly, the order passed by the Division Bench of this Court in the case of *Kapil*

Bittan Barai & Anr. Vs. State of Maharashtra & Ors. (supra) relied upon by the learned counsel for the respondent no.1 also does not apply to

the facts of this case at all. The said judgment was in respect of the directions issued by the Registrar with regard to the conduct of election of

the petitioner society.

58. In so far as the order of remand passed by the Divisional Joint Registrar to the respondent no.4 which is set aside by the respondent no.2 is concerned, in my view, this Court having heard the learned counsel at length and having considered the pleadings and documents in greater detail, this Court does not propose to remand the matter back before the respondent no.4 at this stage. The impugned orders were passed by the respondent no.4 on 21st October 2002 and by the respondent no.2 on 30th June 2005.

59. It is not in dispute that in the revision application filed by the petitioner under Section 152 of the MCS Act before the Divisional Joint Registrar, the Divisional Joint Registrar had passed an order of status quo on 11th December 2002 during the pendency of the said appeal filed by the petitioner which continued till disposal of the appeal under Section 152 of the MCS Act till 23rd January 2004. A perusal of the record and more particularly letter dated 15th February 2003 annexed at Exhibit 'M' to the petition addressed by the respondent no.1 to the respondent no.4 clearly indicates that even according to the respondent no.1, the repairing work was commenced on 25th November 2002 and was completed on 25th December 2002 i.e. during the period when the status-quo order was in force. The respondent no.1 even otherwise could not demand any amount for the work allegedly carried out during the period of status quo order from the petitioner.

60. I therefore pass the following order :-

- (i) The impugned orders dated 30th June 2005 passed by the respondent no.2 and the order dated 21st October 2002 passed by the respondent no.4 and the order dated 23rd January 2004 passed by the respondent no.3 are set aside.
- (ii) The complaint filed by the respondent no.1 before the respondent no.4 is dismissed.
- (iii) Rule is made absolute in aforesaid terms. No order as to costs.