
(1999) 10 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 2328 of 1991

The Bombay Catholic Co-operative Housing Society Ltd.

APPELLANT

Vs

V.B. Mathankar and Others

RESPONDENT

Date of Decision : 22-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, 11

Constitution of India, 1950 — Article 19, 226

Electricity Act, 1910 — Section 4, 5(1)

Maharashtra Co-operative Societies Act, 1960 — Section 144, 149, 152, 154, 165

Maharashtra Co-operative Societies Rules, 1961 — Rule 17

Citation : (2000) 1 ALLMR 681 : (2000) 2 BomCR 480 : (2000) 1 BOMLR 827 :
(2000) 3 MhLj 273

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Milind Sakhardande and Vineet Naik, instructed by Dhruve Liladhar and Co, for the Appellant; Rajiv Mane, K.B. Purohit, instructed by y Purohit and Purohit, M.M. Joshi, instructed by y Shantilal and Co., S.H. Doctor, instructed by y G.T. Gokhale and Ms. Meeta Dagli, Mulla and Mulla and Craigie Blunt and Caroe and Ms. A. Wandrewala and K. Setalvad instructed by y Ms. Neeta Madhawani, for the Respondent

Judgement

R.M. Lodha, J.—The Bombay Catholic Co-operative Housing Society Limited-the petitioner has filed this petition under Article 226 of the Constitution of India, challenging the legality and correctness of the order passed by the Assistant Registrar, Co-operative Societies, H-West Ward, Fort, Bombay, the Divisional Joint Registrar, Co-operative Societies, Bombay Region, Bombay, the State Government in its revisional jurisdiction dated 22-2-1983, 19-9-1989 and 24-6-1991 respectively and the communication dated 18-1-90 received by the petitioner from the Assistant Registrar, Co-operative Societies, Bombay. In substance, the petitioner is aggrieved by the order of bifurcation of society passed by the Assistant Registrar on 22-2-1983 u/s 18 of the Maharashtra Co-operative Societies Act, 1960 confirmed in appeal and revision by the appellate

and revisional authorities.

2. The facts, necessary for disposal of the writ petition, which are reflected therefrom are: The petitioner-society was incorporated and registered under the Societies Registration Act in the year 1917. The objects of the society among others are to carry on the trade of building and of buying, selling, hiring, letting and developing the land in accordance with the cooperative principles. The petitioner society purchased about 6 acres of land from private parties initially. They purchased further 11 acres of land in Santacruz from private parties somewhere in the year 1918. The petitioner society's entire estate was named after Lord Willingdon, the then Governor of Bombay comprising of three distinct areas viz. (1) Willingdon West, (2) Willingdon East and (3) Willingdon South. The area in Willingdon West admeasuring about 11 acres was sold to the shareholders on freehold basis. The area in Willingdon South was leased to the shareholders for 998 years. The land comprising of 5.1/2 acres known as Willingdon East was partially developed by the petitioner by constructing 25 cottages and were let out on monthly rental basis. After coming into force of the Maharashtra Co-operative Societies Act, 1960 (Act of 1960), the tenants became members of the petitioner-society for which fresh shares were issued at the face value of Rs. 50/- per share. The petitioner-society wanted to develop the land admeasuring 5.1/2 acres and accordingly development scheme was framed. Under the said development scheme, the tenants who occupied the cottages were to be provided tenements in the new buildings on a monthly tenancy basis. The said development was intended to give full effect to the aim, objects and ideas of the petitioner-society to provide residential accommodation to its members. It is the case of the petitioner-society that proposed development was comprehensive in as much as it stipulated maximum number of tenements for a large number of members of various income groups keeping in mind the interest of the tenant members on the existing structures and all the tenant members were to stand benefited by the development of the land. The resolution passed by the society to that effect was challenged by tenant members u/s 91 of the Act of 1960 inter alia praying for declaration that the said resolution dated 25th September, 1966 was illegal, unjust and ultra-vires the powers of petitioner-society. The dispute raised by tenant members u/s 91 was dismissed by the Officer on Special Duty by his judgment and award dated 15th March, 1971. The appeal was preferred by tenant-members before the Maharashtra State Co-operative Tribunal but the said appeal was dismissed and the order dated 15th March, 1971 passed by Officer on Special Duty was maintained. Against the concurrent orders of the Officer on Special Duty and the Maharashtra State Co-operative Tribunal, writ petition was preferred by tenant-members before this Court which too was dismissed on 25th July, 1972. It is further case of petitioner society that after the said dispute u/s 91 challenging the resolution had attained finality, it invited applications from its members holding five shares for allotment of flats in the proposed building to be constructed under the new building scheme. The plans were also submitted to the Bombay Municipal Corporation for

construction which were passed and duly sanctioned. Thereafter, the petitioner-society decided to allot new flats to the successful members and called upon them to make advance payment of Rs. 15,000/-each towards the price of the said flats. About 200 members made advance payment of Rs. 15,000/- and thus an amount of Rs. 30 lacs was approximately collected. The tenant-members thereafter made an application to the District Deputy Registrar for bifurcation of the society. In the application, the tenant-members averred that the society is not functioning as required under the Act of 1960 and is being administered by a majority of non-tenant members having no interest in the objects of the society and they are acting in detriment to the interest of the tenant-members and tenants. The non-tenant members who had purchased plots either on leasehold or freehold basis were allowed to continue and to participate as members and to manage the society even though they do not have any subsisting interest in the proper and efficient management of the society's property. They have built their own houses far away from the tenements occupied by the society's tenants and have benefited immensely as members of the society. Such members are making vast profits at the cost of the tenant-members. Some of them have purchased land from the society at a very low cost while others have obtained land from the society on leasehold basis for 998 years. It was further alleged in the application by tenant-members that after obtaining several benefits, the freehold members and leasehold members are monopolizing the administration of the society. The number of members who are not tenant-members is overwhelmingly large being not less than 685 out of approximately 745 members of the society. These non-tenant members should be removed from the membership of the society by bifurcating the society in accordance with the provisions of the Act of 1960. The Managing Committee of the society consist of 11 members of which only two are representatives of the tenant-members. Hardly any money collected from the tenants by way of rent is used for repairs of the tenements. In the background of these facts, the tenant-members pleaded that the petitioner-society should be bifurcated into two societies viz. (i) comprising of tenant-members; and (ii) comprising of non-tenant members. Upon receipt of the said application u/s 18 of the Act of 1960, the Deputy Registrar held consultation with the Federal Society and after receipt of the opinion of the Federal Society that the petitioner society may be bifurcated, the Deputy Registrar issued a draft order dated 6th September, 1979 to the petitioner-society. In the draft order, the District Deputy Registrar tentatively recorded the satisfaction that in the interest of the members of the society and in order to secure proper administration and management of the society, the bifurcation of the society into two separate societies is necessary. Accordingly, the petitioner-society was called upon to invite suggestions or objections from the members, creditors, depositors, employees of the society and others whose interest in the society was likely to be affected and society was called upon to send their objections and/or suggestions of the concerned person/ persons likely to be affected alongwith objections and/or suggestions of the society itself within two months from receipt of the notice. In the draft order, the District Deputy Registrar gave details of the proposed bifurcation of the society

into two societies. On 15-10-1979, the Secretary of the society sent reply to the District Deputy Registrar stating therein that note together with draft order sent by District Deputy Registrar is being circulated with the annual report amongst 755 members of the society for consideration in the annual general meeting scheduled for early December, 1979. Till the decision taken by the general body was communicated to him, the District Deputy Registrar was requested to consider the note appended thereof which was prepared for consideration of general body as reply to the draft order. It is the case of the petitioner-society that in the annual general meeting held on 16th December, 1979, the resolution was passed disapproving and rejecting the proposed bifurcation of the petitioner-society in terms of the draft order. The petitioner-society also took up the matter with the Federal Society viz. Bombay-Thane District Co-operative Housing Society Ltd. The Federal Society re-examined the matter including the record of the petitioner-society and vide its report dated 7-6-80 submitted to the District Deputy Registrar that there was no case for bifurcation or division of the petitioner-society. The District Deputy Registrar after visiting the petitioner-society and examining the records, vide his order dated 27th June, 1980 withdrew the notice dated 6-7-79 alongwith draft order proposing bifurcation of the society. The association of the tenant members challenged the order of the District Deputy Registrar dated 27th June, 1980 withdrawing the notice and draft order proposing bifurcation in appeal u/s 152 of the Act of 1960 before the Divisional Joint Registrar. The Divisional Joint Registrar vide his order dated 12th December, 1980 allowed the appeal, set aside the order of district Deputy Registrar dated 27-6-80 and remanded the case back to the District Deputy Registrar to reconsider the issue in the light of the observations made in the order. The petitioner-society challenge the order of the Divisional Joint Registrar in revision and the revisional authority by its order set aside the order of Divisional Joint Registrar and remanded the matter back to the Divisional Joint Registrar for passing fresh order in appeal after hearing both the parties. After the order of remand was made by the revisional authority, the Divisional Joint Registrar heard the matter afresh and by its order dated 15-6-82 allowed the appeal, set aside the order passed by the District Deputy Registrar on 27-6-80 and directed the Assistant Registrar, Co-operative Societies to proceed with the matter from the stage of draft bifurcation order dated 6-9-1979. The appellate authority made certain observations in respect of non-accommodated shareholders as well. The petitioner-society dissatisfied with the order of the Divisional Joint Registrar, passed on 15-6-82 again preferred revision application to the State Government and applied for stay of the order of Divisional Joint Registrar. However, no order of stay was passed in favour of the petitioner-society by the revisional authority. As a result thereof, the Assistant Registrar proceeded in the matter from the stage of draft order as directed by the appellate authority and by its order dated 22-2-83, ordered bifurcation of the society in two societies; (i) in the name of Bombay Catholic Co-operative Housing Society Ltd. comprising of lessee members, freehold land owners and others and (ii) in the name of Bombay Catholic Co-operative (Tenants) Housing

Society Ltd. comprising of tenant members. The Assistant Registrar gave certain directions to the newly created society of the tenant members viz. Bombay Catholic Co-operative (Tenants) Housing Society Ltd. inter alia that the admission of non-accommodated shareholders members of the newly created society viz. Bombay Catholic Co-operative (Tenants) Housing Society Ltd. shall be strictly according to the chronological order and shall be gradual as and when tenements get ready for occupation; while accommodating such persons to the membership, the new society shall ensure that (i) the non-accommodated shareholder members really interested in securing tenements of the society at the time of acquiring shares and not for investment/ any other purpose other than residential accommodation, (ii) such members are eligible to become members under the Bye-laws, Rules and the Act (iii) the said non-accommodated shareholders are willing and are in a position to contribute and have capacity to pay towards the cost of new tenements and (iv) if requisite number of such eligible shareholders are not available, it shall be open to the newly created society of tenant members to admit even outsiders to its membership. The order passed by the Assistant Registrar on 22-2-83 whereby the petitioner-society was ordered to be bifurcated was challenged by the society in appeal before the Divisional Joint Registrar. The Divisional Joint Registrar did not find any infirmity in the order of bifurcation passed by the Assistant Registrar and by detailed and elaborate order dated 19-9-98 dismissed the appeal and maintained the order of bifurcation passed by the Assistant Registrar. The society then challenged both the orders in revision application before the State Government. The revisional authority, too, did not find any merit in the revision application and was of the view that the order of bifurcation of the society passed by the Assistant Registrar and confirmed in appeal by the Divisional Joint Registrar was proper and did not call for any interference. Consequently, the revision application was dismissed by the Minister of State for Co-operation, Government of Maharashtra on 24-6-91. After the order of bifurcation was passed by the Assistant Registrar on 22-3-83 and the appeal was dismissed by the Divisional Joint Registrar on 19-9-1989, the Assistant Registrar by his order dated 18th January, 1990 informed the petitioner-society that its registration certificate stands cancelled and the society shall not operate its bank account. The said communication sent by the Assistant Registrar, Co-operative Societies dated 18th January, 1990 marked Exhibit "R" is also under challenge. The fate of this communication depends on the fate of the order of bifurcation.

3. Mr. Sakhardande, learned Counsel for petitioner-society firstly urged that the order of bifurcation passed by the Assistant Registrar on 22-2-1983 is bad in law since it is based on the draft order issued by the Deputy District Registrar who had no jurisdiction. The draft order issued by the District Deputy Registrar dated 6-9-79 is Exhibit "F" on record but in the writ petition there is no prayer made in respect of the said order. The contention of the learned Counsel for petitioner, therefore, that the draft order issued by the Deputy District Registrar was without jurisdiction, cannot be accepted. Besides that, it would be seen that after

the draft order dated 6-9-79 was issued by the District Deputy Registrar and served upon the society calling upon their objections/suggestions, ultimately, by order dated 27-6-80, the said draft order was withdrawn. The order passed by the District Deputy Registrar on 27-6-80 withdrawing draft order was challenged by tenant members in appeal before the Divisional Joint Registrar who by order dated 12-12-80 set aside the order of the Deputy District Registrar and remanded the matter back to the District Deputy Registrar for fresh decision. Aggrieved by the order passed by the Divisional Joint Registrar on 12-12-80, the petitioner society filed revision application before the State Government. The revisional authority allowed the revisional application, set aside the order dated 12-12-80 and remanded the matter back to the Divisional Joint Registrar for fresh hearing of the appeal. After the remand, the Divisional Joint Registrar re-heard the appeal and by his order dated 15-6-82 set aside the order dated 27-6-80 passed by the District Deputy Registrar withdrawing the draft order and directed the then competent authority viz. the Assistant Registrar, Co-operative Societies H/W Ward, Bombay to proceed in the matter from the stage of a draft bifurcation order dated 6-9-79. The said direction given by the Divisional Joint Registrar in his order dated 15-6-82 had attained finality since in the present writ petition, the said order was not challenged initially and after about 17 years the application was made seeking amendment in the writ petition for challenging the order dated 15-6-82. The said application for amendment has been dismissed on 16th September, 1999. The order of bifurcation was passed by the Assistant Registrar on 22-2-83 pursuant to the remand order dated 15-12-82 directing Assistant Registrar to proceed from the stage of the draft order dated 6-9-79. Thus, it cannot be said nor there is any merit in the contention of the learned Counsel for petitioner that the order dated 22-2-1983 is bad in law being based on the draft order issued by the Deputy District Registrar without jurisdiction. Even otherwise it cannot be said that the District Deputy Registrar had no jurisdiction at the time of issuance of draft order.

4. The learned Counsel for petitioner-society then contended that the order passed by the Assistant Registrar on 22-2-83 ordering bifurcation of the society is bad being hit by the provisions analogous to res-judicata. The contention of Mr. Sakhardande is that the facts and the factors taken into consideration by the Assistant Registrar for bifurcation of the society were raised by tenant members in the dispute between them and the society but were all negatived. According to the learned Counsel, the findings recorded by the Officer on Special Duty in dispute proceedings under sections 91 to 96 of the Act of 1960 were binding on the Assistant Registrar and on this ground also, the order of bifurcation cannot be sustained. The contention of the learned Counsel for petitioner, I am of the view, is also without any merit and substance. It is true that the tenant members raised the dispute u/s 91 of the Act of 1960 challenging the resolution passed by the society to demolish the cottages in occupation of the tenant members and to construct new buildings in their place. The said dispute was dismissed by the Officer on Special Duty vide its award dated 15-3-71. The said order passed by

the Officer on Special Duty was challenged by the tenant members unsuccessfully right upto this Court. However, the subject matter in the said dispute related to resolution passed by the society for demolition of old cottages and constructing new buildings which has no nexus with the power to direct division of the society given to the Registrar or for that matter, the authority notified on his behalf in accordance with the provisions contained in section 18 of the Act of 1960 and the Rules framed thereunder. The power of bifurcation of society can only be exercised by the authority mentioned in section 18 of the Act on its satisfaction that division of the society is essential in the public interest or in the interest of co-operative movement or for the purpose of securing the proper management of any society. The order for division of society can be passed by the concerned authority only upon compliance of the procedure prescribed in section 18 based on the grounds stated therein. The consideration of division of society was not and could not have been the subject matter of the dispute u/s 91 of the Act of 1960 nor there is any finding recorded in the award passed by the Officer on Special Duty in the proceedings u/s 91 about public interest or interest of cooperative movement or for the purpose of the proper management of the society, the factors necessary for exercise of the power for division of the co-operative society. The Registrar or for that matter the authority satisfied on that behalf is the only competent authority entitled to exercise the power u/s 18 which cannot be influenced by any extraneous authority or proceedings nor can he be said to be bound by the findings recorded by the Officer on Special Duty in the proceedings u/s 91. The Officer on Special Duty recorded its findings in the dispute u/s 91 of the Act for considering the question whether the resolution passed by the society accepting in principle demolition of old cottages and constructing new buildings in their place was legal and valid or not. The authority who is empowered to exercise power u/s 18 has to independently consider and reach the satisfaction for division of society either in public interest or in the interest of co-operative movement or for securing proper management of society and that independent satisfaction has to be arrived by the concerned authority alone and not based on or influenced by the order or findings of some authority in some proceedings. The order passed by the Officer on Special Duty on 15-3-71 cannot, therefore, operate either as res-judicata or principles analogous thereto for exercise of the power given to the Registrar for division of the society u/s 18 of the Act of 1960.

5. The order passed by the Assistant Registrar directing division of the society was also challenged by the learned Counsel for petitioner on the ground that the said order was passed during the pendency of society's revision application. According to him, the very pendency of revision application challenging the order dated 15-6-82 whereby the matter was remanded to the Assistant Registrar for considering the question of division of society from the stage of draft order dated 6-9-79 by itself operated as stay of the proceedings. In this connection, the learned Counsel for petitioner relied upon sections 149, 152 and 154 of the Act of 1960 and the provisions of Order 41, Rule 5 C.P.C. also the decision of the

Apex Court in Achutyanand Singh and Another Vs. State of Bihar and Others, . The contention of the learned Counsel is wholly misconceived and is noted only to be rejected. It would be seen that the Divisional Joint Registrar by his order dated 15-6-82 set aside the order of District Deputy Registrar dated 27-6-80 withdrawing the draft order and directed the Assistant Registrar to proceed with the matter from the stage of the draft order dated 6-9-79 afresh. The said order of remand passed by the Divisional Joint Registrar on 15-6-82 was challenged by the petitioner-society in revision before the State Government. Admittedly, the State Government did not grant any stay order staying the order of Divisional Joint Registrar dated 15-6-82 or staying the further proceedings before the Assistant Registrar though specifically prayed for by the petitioner-society. Once the prayer for stay was rejected by the State Government, by no stretch of imagination can it be said that during pendency of revision application, the effect of the order dated 15-6-82 was automatically stayed and further proceedings before the Assistant Registrar pursuant to the order dated 15-6-82 stood stayed. If that was so, where was the necessity for the petitioner to pray for stay from the Revisional Authority during pendency of revision application. There is no principle of law I have known nor the learned Counsel could support that by mere pendency of the appeal or revision, the operation of the impugned order in appeal or revision is ipso facto stayed. Sections 144, 152 and 154 relied upon by the learned Counsel for petitioner, to say the least, has no relevance in support of the contention advanced by the learned Counsel for petitioner. Section 149 provides for constitution of Maharashtra State Co-operative Appellate Court and the procedure for hearing of the appeal by the State Co-operative Appellate Court and power to pass such orders in appeal and application by the Co-operative Appellate Court. Section 152 provides for appeal against various orders or decisions mentioned therein including the order passed u/s 18 of the Act of 1960. It further provides for limitation for filing appeal and other ancillary provisions. The revisional power of State Government and Registrar are provided in section 154 which reads thus :--

154. Revisionary powers of State Government and Registrar.--(1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings, if in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint

Registrar, and to the Registrar if passed by any other officer.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.

6. On plain reading of section 154, it cannot be said nor can it be held that upon filing the revision application before the State Government or Registrar as the case may be, the impugned order ipso facto stands stayed. I am of the clear view that by mere pendency of revision application u/s 154, it cannot be held that the operation of the impugned order stands stayed. Unless the revisional authority passes specific order of stay during the pendency of revision application, the operation of the impugned order is not stayed. In view of this position, it cannot be said that by mere pendency of revision application challenging the order dated 15-6-82, the operation of the order dated 15-6-82 stood stayed and further proceeding before the Assistant Registrar were also stayed automatically. The judgment of the Apex Court relied upon by the learned Counsel for petitioner in Achutyanand Singh (supra) also has no application in the facts and circumstances of the present case.

7. Mr. Sakhardande, learned Counsel for petitioner-society, then, contended that it was incumbent upon the Assistant Registrar to issue fresh show-cause notice or draft order after it started proceedings on remand of the matter by Divisional Joint Registrar. This argument of the learned Counsel for petitioner, too, is devoid of any merit. In the order of remand dated 15-6-82 itself, the Divisional Joint Registrar directed the Assistant Registrar to proceed further and fresh from the stage of the draft order dated 6-9-79. As already noted above, the order dated 15-6-82 passed by the Divisional Joint Registrar is not under challenge in writ petition. In view of the direction contained in the order of remand dated 15-6-82, it was not required of the Assistant Registrar to issue fresh show-cause notice before proceeding in the matter u/s 18 of the Act, 1960.

8. The learned Counsel for petitioner further contended that the order of division dated 22-2-83 is manifestly bad-in-law being in breach of the provisions of section 18 of the Act of 1960. This argument of the learned Counsel for petitioner is based on the ground that there was no effective and meaningful consultation by the Assistant Registrar with the federal society before passing the order dated 22-2-83. The submission of Mr. Sakhardande, is that consultation with Federal Society as provided in section 18 ought to have been made after the receipt of the reply from the society to the show-cause notice and the said reply ought to have been sent to Federal Society alongwith the complete material to enable the

Federal Society to give its opinion and breach of such procedure renders the order of bifurcation illegal. According to him, the consultation made by the authority with the Federal Society before issuance of draft order is no consultation within the meaning of section 18 of the Act of 1960.

9. To appreciate this contention, it would be advantageous to refer to some relevant facts. The tenant members made an application for division of the society to the District Deputy Registrar on 3rd June, 1979. The copy of said application was sent by the concerned authority to the Federal Society viz. Bombay-Thane District Co-operative Housing Federation Limited to its opinion. The Federal Society vide their letter dated 31-8-79 expressed their view in favour of the bifurcation of the said society. After receipt of the views of the Federal Society, the Deputy District Registrar issued draft order dated 6-9-79 proposing bifurcation of petitioner-society in the interest of the members of the society and in order to secure proper administration and management of the society. Upon receipt of the draft order, though no specific reply was sent by the society but vide its communication dated 15-10-79 and the note appended thereto, the Secretary of the society requested the authority to consider the said note circulated to its members treated as reply to the draft order till further communication was sent by the society. It appears, thereafter, the society took up the matter with the Federal Society on its own and subsequently, the Federal Society seems to have changed its view and informed the authority that petitioner-society does not need to be divided. The Assistant Registrar vide its order dated 22-2-83 held that bifurcation of society was in public interest as well as for better and proper management of the society and in the interest of co-operative movement. The question arises whether consultation with the Federal Society in the aforesaid facts and circumstances was proper or suffered from any illegality.

10. Section 18 of the Act of 1960 reads thus :--

18. Power to direct amalgamation, division and reorganisations in public interest, etc.--(1) Where the Registrar is satisfied that it is essential in the public interest or in the interest of the co-operative movement, or for the purpose of securing the proper management of any society, that two or more societies should amalgamate or any society should be divided to form two or more societies or should be reorganised then notwithstanding anything contained in the last preceding section but subject to the provisions of this section, the Registrar may, after consulting such federal society as may be notified by the State Government by order notified in the Official Gazette, provide for the amalgamation, division or reorganisation of those societies into a single society, or into societies with such constitution, property rights, interests and authorities, and such liabilities, duties and obligations as may be specified in the order.

(2) No order shall be made under this section, unless -

(a) a copy of the proposed order has been sent in draft to the society or each of

the societies concerned;

(b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, either from the society or from any member or class of members thereof, or from any creditor or class of creditors.

(3) The order referred to in sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to the amalgamation, the division or recognition.

(4) Every member or creditor of (or other person interested in), each of the societies to be amalgamated, divided or reorganised who has objected to the scheme of amalgamation, division or reorganisation, within the period specified, shall be entitled to receive, on the issue of the order of amalgamation, division or re-organisation his share or interest if he be a member and the amount in satisfaction of his dues if he be a creditor.

(5) On the issue of an order under sub-section (2), the provisions in subsection (2), (3) and (4) of section 17 shall apply to the societies so amalgamated, divided or re-organised as if they were amalgamated, divided or reorganised under that section, and to the society amalgamated, divided or reorganised.

(6) Nothing contained, in this section shall apply for the amalgamation of two or more Co-operative Banks or two or more primary agricultural credit societies.

11. In exercise of its powers conferred u/s 165 of the Act of 1960, the State Government framed the Maharashtra Co-operative Societies Rules, 1961. Rule 17 which is relevant for the present purposes reads thus---

17. Direction by Registrar for amalgamation, division and reorganisation of societies.---(1) Before issuing any order under sub-section (1) of section 18 providing for the amalgamation, division or reorganisation of any society or societies, the Registrar shall prepare a draft scheme in respect of such amalgamation, division or reorganisation stating in particular the manner in which the new committee or committee of the society or societies resulting from such amalgamation, conversion or reorganisation shall be constituted and the bye-laws which such society or societies shall follow. The Registrar shall then consult such federal society, as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed to be issued by him under sub-section (1) of section 18, to the society or each of the societies concerned calling upon it or them to invite objections or suggestions from any member or class of members thereof or from any creditor or class of

creditors and to submit such objections and suggestions together with its own or their own suggestions and objections within a period of not less than two months from the date on which the copy of the draft aforesaid was received by it or them.

(2) The Registrar shall consider all such suggestions and objections and make such modifications in the draft over as may seem to him desirable in the light of those suggestions or objections and then issue a final order under sub-section (1) of section 18.

(3) Any member or creditor of each of the societies to be amalgamated, divided or reorganised, who has objected to the scheme of amalgamation, division, or reorganisation within the period specified in sub-rule (1), may apply to the Registrar for payment of his share or interest, if he be a member, and the amount in satisfaction of his dues, if he be a creditor. Such application shall be, separate and distinct from the objection or suggestion which he may have submitted to the society or the Registrar under clause (b) of sub-section (2) of section 18. It shall be competent for the Registrar to nominate an officer not below the rank of a Deputy Registrar to investigate such applications and to determine the payments required to be made to the members or creditors, as the case may be.

(4) Subject to the provisions of the Act, the rule and the bye-laws, the Registrar may by order require the society concerned to meet in full or satisfy otherwise all due claims of the members and creditors and thereupon the society shall be bound to meet in full or satisfy otherwise all due claims of the members and creditors within such time as may be specified by the Registrar in the order.

12. According to section 18, the order of bifurcation of society can be passed by the Registrar upon his satisfaction that it is essential in the public interest or in the interest of the co-operative movement or for the purpose of securing proper management of any society after consulting the Federal Society. As provided in sub-section (2) of section 18, no order for division of the society can be passed by the Registrar or for that matter authority who has been delegated such power unless a draft order has been served on the society and the concerned authority has considered the reply from the concerned society within time as may be fixed by the authority. Rule 17 specifically provides the stage at which the consultation with the Federal Society is required to be made and the procedure which is required to be followed by the authority u/s 18. It provides that before passing an order for division, the competent authority shall prepare a draft scheme stating the manner in which the new committee or committees of the society or societies resulting from such division shall be constituted and the bye-laws which the society or societies shall follow. After such draft scheme is prepared, the authority is required to consult the Federal Society. The expression occurring in Rule 17, "Registrar shall then consult such federal society, as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed to be issued by him under subsection (1) of

section 18, to the society calling upon objections or suggestions" is clearly indicative that the consultation which the Registrar is required to have with the Federal Society must precede the issuance of draft order to the affected society. Neither section 18 nor Rule 17 provides that the consultation with the Federal Society by the competent authority must be held after the reply or objections are received from the concerned society. Section 18 does not specify the stage at which the Registrar is required to have consultation with the Federal Society but Rule 17 makes a clear provision that the Registrar shall consult the Federal Society before the draft order is issued and served upon the society. Rule 17 contemplates that before the draft order is served by the competent authority upon the concerned society, it should have consultation with the Federal Society and after considering the suggestions or opinion, if any, received from the Federal Society, the draft order should be served upon the society. The scheme of section 18 and Rule 17 appears to be that after consultation with the Federal Society, the competent authority must issue and serve draft order upon the society proposing division so that the concerned society can submit its objections comprehensively knowing the suggestions or views of the Federal Society. I do not find from the conjoint reading of the provisions of section 18 and Rule 17 that the competent authority is mandatorily required to consult Federal Society after receipt of objections or reply from the society even though the Federal Society has been consulted before draft order. That is not the scheme of section 18 and Rule 17. Mr. Sakhardande, learned Counsel for the petitioner heavily relied upon the judgment of the Apex Court in *Narayanan Sankaran Mooss Vs. The State of Kerala and Another*, . In the said judgment, the Apex Court was dealing with section 4 of the Electricity Act, 1910 which provided for cancellation of license by the Government for the supply of electric energy. That was a case where the license of Kottayam Electric Supply Agency was revoked by an order dated May 17, 1963 by the State of Kerala with effect from 1st August, 1963 in exercise of the powers u/s 5(1)(a) of the Indian Electricity Act. The licensee who was aggrieved by revocation, challenged the said order on the ground that the order of revocation was passed without consultation with the Board which was mandatory as provided u/s 4. The Apex Court upon consideration of the matter observed thus ---

"It is necessary to consider whether the Act obligates the Board to consider the explanation of the licensee before recommending any action against him. Section 4 as it stood originally read:

"(1) The State Government may, if in its" opinion the public interest so requires, revoke a license in any of the following cases, namely;

(a) Where the licensee in the opinion of the State Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act.

(b) Where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to

revocation.

(c) Where the licensee fails, within the period fixed in this behalf by his license or any longer period which the State Government may substitute therefore by order under sub-section (3) cl. (b) and before exercising any of the powers conferred on him thereby in relation to the execution of works.

(i) to show, to the satisfaction of the State Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

(ii) to make the deposit or furnish the security required by his license;

(d) where the licensee is, in the opinion of the State Government, unable by reason of his insolvency fully and efficiently to discharge the duties and obligations imposed on him by his license.

(2) Whether the State Government might, under sub-section (1) revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose and any further terms or conditions so imposed shall be binding upon, and observed by, the licensee, and shall be of like force and effect as if they were contained in the license."

The original section 4 was considered by the Privy Council in AIR 1949 136 (Privy Council) . The Privy Council held that in section 4(1)(a) the opinion of the Government was not subject to any objective tests. The Privy Council said:

"The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming an opinion." However, it was held that the opinion should relate to "anything required under the Act." The Privy Council said: "If it relates to something which was not required under the Act, the revocation of the license would be invalid."

Then there came our Constitution with its Art. 19(1)(g) conferring on the citizens the right to carry on business subject to reasonable restrictions in public interest. This Court in *Dr. N.B. Khare Vs. The State of Delhi*, held that if an Act which imposes restrictions on the rights specified in Article 19, does not provide for a reasonable hearing to the party affected, the restriction could not be said to be reasonable in certain circumstances. It seems that Parliament realised, though late, in 1958 that section 4 may not stand the test of Article 19(1)(g). Accordingly, it made radical amendments in section 4. The amended section 4 reads:

"The State Government may, if in its opinion the public interest so requires, and after consulting the State Electricity Board revoke a license in any of the following cases, namely:

(a) Where the licensee, in the opinion of the State Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under

this Act.

(b) Where the licensee breaks any of the terms and conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;

(c) Where the licensee fails, within the period fixed in this behalf by his license or any longer period which the State Government may substitute therefore by order u/s 4-A, sub-section (1) and before exercising any of the powers conferred on him thereby in relation to the execution of works---

(i) to show, to the satisfaction of the State Government that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

(ii) to make the deposit or furnish the security required by his license;

(d) where in the opinion of the State Government the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his license

(e) where a licensee, in the opinion of the State Government has made default in complying with any direction issued u/s 22-A.

(2) Where in its opinion the public interest so permits, the State Government may, on the application or with the consent of the licensee, and after consulting the State Electricity Board, and the Central Government where that Government is interested, and if the licensee is not a local authority, after consulting also the local authority, if any, concerned, revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit.

(3) No license shall be revoked under sub-section (1) unless the State Government has given to the licensee not less than three months notice in writing, stating the grounds on which it is proposed to revoke the license by the licensee within the period of that notice, against the proposed revocation.

(4) Where the State Government might under sub-section (1) revoke a license it may instead of revoking the license permit it to remain in force subject to such further terms and conditions as it thinks fit to impose and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained in the license."

The amending Act adds sub-sections (2) and (3) and converts the former sub-section (2) into sub-section (4). It adds Clause (e) to sub-section (1). It also adds and after consulting the State Electricity Board in the opening part of sub-section (1). The amendments relevant in this case are the phrase "after consulting the State Electricity Board" and subsection (3) which now provides for a hearing to the licensee before revocation of his license.

It appears from the reading of section 4 that when the Government consults the

Board on the question of revocation of a license u/s 4, the Board is to make up its mind as to whether it should recommend: (1) to revoke the license, or (2) not to revoke the license, or (3) to permit the license to remain in force subject to such further terms and conditions as may be thought proper. It is difficult to conceive how the Board will make a choice out of these three courses without considering the explanation of the licensee. The explanation may make out a case for not revoking the license or a case for continuation of the license with certain over-added conditions. In a particular case the Government may propose to revoke the license u/s 4(1)(c) on the ground that the licensee has failed to show that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license. Similarly, it may propose to revoke the license u/s 4(1)(d) where the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his license. In none of these cases the Board will be able to make a just choice out of the aforesaid three courses without applying its mind to the explanation of the licensee. In case of a charge u/s 4(1)(g) it is open to the Board to advance a loan to the licensee and recommend against the proposed revocation of his license. We are accordingly of opinion that section 4 contemplates that the Board should make its recommendation only after considering the explanation of the licensee. It would follow that the Board should be consulted by the Government after the licensee's explanation has been received. We have already said that in the present case the Board was consulted much before the receipt of the appellant's explanation and that the Board consequently could not consider the explanation at the time of making its recommendation in favour of revocation of the license.

Counsel for the Board has submitted that the Board is to be consulted only as regards "public interest". It is sufficient to state that we find no force at all in this argument. In the alternative, it is said that the Board is to be consulted only at the stage when the Government takes a provisional decision to revoke the license. The words "after consulting the Board" have been added by an amendment. The suggested construction would make the amendment a mere pompous word-spinning.

It is now to be seen as to what is the effect of this premature consultation of the Board by the Government on the impugned order. The Act does not expressly provide for the consequence of premature consultation. It does not say that the order of revocation is void. Sri Sen contends that the order will be void. Counsel for the Board, on the other hand, contends that it will not be void. According to him, the provision regarding consultation of the Board is directory, and not mandatory. Non-compliance with a directory provision does not nullify the order. It is not disputed that if the provision is mandatory, the order of revocation will be void.

The object and setting of the phrase "after consulting the Board" in section 4 will have to be examined for deciding whether the provision is mandatory or

directory. H.N. Rishbud and Inder Singh Vs. The State of Delhi, .

The power to revoke the license is a drastic power. The revocation of license results in severe judgment of the right to carry on business. Having in mind the requirements of Art. 19(1)(g), Parliament has, it seems to us, prescribed certain conditions to prevent the abuse of power and to ensure just exercise of power. Clauses (a) to (d) of section 4 prescribe some of the conditions precedent for the exercise of power. The order of revocation, in breach of any one of those conditions, will undoubtedly be void. The clause "if in its opinion the public interest so requires" is also a condition precedent. On a successful showing that the order of revocation has been made without the Government applying its mind to the aspect of public interest or without forming an honest opinion on that aspect, it will, we have no doubt, be void. The phrase "after consulting the State Electricity Board" is sandwiched between the clause "if in its opinion the public interest so requires" and Cls. (a) to (d). In this context it appears to us that consultation with the Board is also a condition precedent for making the order of revocation. Accordingly the breach of this condition precedent should also entail the same consequence as the breach of the other conditions referred to earlier. It may be observed that the phrase "after consulting the State Electricity Board" did not find place in section 4 as it stood originally. It was introduced in section 4 in 1950 by an amendment. It seems to us that it was introduced in section 4 with the object of providing an additional safeguard to the licensee. When revoking a license, the State Government acts in two stages. At first it forms a tentative opinion in favour of revoking the license. Then it calls for an explanation from the licensee. When the explanation is received, it considers the explanation. If not satisfied with the explanation, it passes the final order of revocation. First impressions and provisional judgments have a tendency to become intimate ideas and final judgments. They would settle unconsciously on the investigator's mind as the imperceptible dust-particles on an optical lens. They would dim his understanding and obfuscate his observation. Facts which will dovetail with them would arrest his attention, facts which will conflict with them would flit his observation. If by any chance he happens to notice refractory facts, he would seek to reconcile them with his first impressions and provisional judgments. This understanding of human psychology seems to have persuaded Parliament to interpose the condition of the Board's consultation to the Government's action. The Board is an independent body. It consists of three members. One of them is a technical expert, the other a financial expert, and the third an administrative expert. While considering the facts presented to it by the Government and by the licensee in his explanation, the Board will undoubtedly act with an open and unconditioned mind and will be able to offer unbiased Counsel to the Government. Having regard to the object and context, we are of the view that the condition of consulting the Board is mandatory and the breach of this condition will make the order of revocation void. We have already held that the Board was not consulted after the explanation was received. Accordingly we are of opinion that the order is void. The consequential order of acquisition

will ipso facto fall down.

13. The aforesaid observations were made by the Apex Court in the light of section 4 of the Electricity Act as was amended by the Act of 1958 which provided that the State Government may if in its opinion the public interest so requires and after consulting the State Electricity Board revoke the license in the manner and for the cases stated therein. Looking to the entire scheme of section 4 and its consequences flowing therefrom, the Apex Court held that consultation to be effective as provided u/s 4 must be with the Board after the receipt of the explanation from the licensee. In the present case, as I have already noted, Rule 17 specifically provides the stage at which the Registrar or for that matter the concerned authority is required to have consultation with the Federal Society and that stage is before issuance of draft order to the society. In view of the stage of consultation specifically provided in Rule 17, it cannot be said that the Registrar is required to have consultation again with the Federal Society after receipt of reply or objections from the society. Section 18 and Rule 17 have to be read together and from the combined reading of the said provisions, I am of the view that the observations of the Apex Court aforequoted in Narayana Sankaran Mooss cannot be applied here and it cannot be held that it was incumbent upon the concerned authority to have consultation with the Federal Society after the objections were received from the concerned society though Federal Society was consulted before the draft order was issued. The relevant provisions of section 18 and Rule 17 provide for consultation by the Registrar or concerned authority with Federal Society only once and that, too, before issuance of draft order and nothing further can be read in the said provision. In view of the stage of consultation specifically provided in Rule 17, I do not think it necessary to deal with judgments relied upon by the learned Counsel dealing with expression "Consultation". In the present case, admittedly, before issuance of draft order on 6-9-79, the Deputy District Registrar had consultation with the Federal Society and as a matter of fact, in response to the letter sent by Deputy District Registrar to the Federal Society, the Federal Society by its letter dated 31-8-79 agreed with the proposal of bifurcation of the petitioner-society. The subsequent change of the view of the Federal Society appears to be based on extraneous consideration and therefore, if the authorities did not consider the said changed view while passing the order of bifurcation, it cannot be said that any error of law has been committed.

14. Mr. Sakhardande, learned Counsel for petitioner further challenged the order of bifurcation dated 22-2-83 passed by the Assistant Registrar on the ground that the said order suffers from apparent errors being one sided based on the contentions of the tenant members, non-consideration of the reply sent by the petitioner-society to the draft order which was treated to be beyond three months time, non-consideration of the Federal Society's subsequent advice dated 7-6-80, influenced by the observations made by the Divisional Joint Registrar in its order dated 15-6-82 and consideration of non-germane matters and assumption of non-existent facts. According to the learned Counsel, the

reasons given by the Assistant Registrar in its order directing bifurcation of the society are extraneous, irrelevant and based on irrelevant facts and non-consideration of relevant and material facts.

15. Perusal of the order passed by the Assistant Registrar ordering bifurcation of the society would reveal that on the following facts and reasons, he found that it was essential for bifurcation of society.

i) The society is presently registered under the Central Co-operative Societies Act, 1912 and the bye-laws adopted by the society run contrary to the provisions contained in the Act of 1960 and the said bye-laws are not identical because (a) membership is only restricted to Roman Catholic community (b) for expulsion of members, only 15 days notice is provided; (c) 10% of the net profits shall be placed at the credit of Reserve Fund; and (d) dispute shall be dealt with as may be provided by the rules;

ii) The society still continues under the bye-laws which are inconsistent with the Act of 1960 and despite the instructions given to the society to amend the bye-laws to suit the provisions of the Act of 1960 and Rules of 1961, no steps have been taken;

iii) The society is a mixed type of co-operative housing society viz. tenant ownership and tenant co-partnership type of society and the composition of membership is of various types viz. (1) Freehold land holders; (2) Lease holders (3) Tenant and (4) only shareholders and looking to the composition of membership, it is difficult to protect the varied interest of its members which has resulted in number of litigations and disputes;

(iv) In view of different and conflicting interest of members viz. free hold members, lease hold members, members shareholder members and tenant members, the homogeneity of the society has been affected and that has consequently, resulted in affecting the smooth working of the society and has created class conflict;

(v) The majority of the members comprise of lease holders, free holders and shareholders and they are trying to squeeze the interest of minority tenant members. This act on the part of the majority members viz. lease holders, free holders and shareholders has created continuous flow of discontent enmity which is beyond reduction. As a result thereof, the entire co-operative character of the society has been lost;

(vi) The membership of the society has become unwieldy and to avoid that and the secure interest of the society and interest of co-operative movement and for better management of the society, the bifurcation is essential;

(vii) The society has large number of shareholders who are just the class of investor type of members who have looked to the society as a source of investment and have never identified themselves with the object of the society and have created a class of their own;

(viii) A large number of members shareholders of 585 persons were enrolled by the society as members with no intention of finding any accommodation either on tenancy basis or ownership basis and no efforts were made to keep such members to be in control;

(ix) No efforts have been made by the society to weed out members who joined with the society with no object of securing accommodation;

(x) This class of large membership of 585 shareholders was apparently created by the management to have their control in the society.

16. The Assistant Registrar was satisfied for bifurcation of society for reasons aforesaid after considering the application made by the tenant members for bifurcation of the society and the opinion of the Federal Society viz. Bombay-Thane Co-operative Housing Federation Limited given earlier recommending bifurcation of the society. He observed that society failed to submit their suggestions or objections from its members, creditors and the employees of the society and from any other persons whose interests were likely to be affected upon bifurcation of society within a period of 2 months from the date of receipt of the draft order. There is no dispute that at no point of time, after receipt of draft order, any of its members, creditors and/or employees submitted any objections or suggestions. The society in response to the notice sent communication on 15-10-79 stating therein that the note appended to the said communication and circulated to its members for consideration of draft order may tentatively be treated as reply to the draft order. This communication dated 15-10-79 has been held by Assistant Registrar to be no reply and it was treated as evasive as part of society's delaying tactics which cannot be said to be totally wrong. Besides that the fact is that while passing the operative order of bifurcation, the Assistant Registrar has taken care of the interest of shareholder members in as much as in para 9 of the operative order, the Assistant Registrar directed thus----

"The admission of non-accommodated shareholders to membership of the newly created society i.e. Bombay Catholic Co-operative (Tenants) Housing Society Ltd., shall be strictly according to the chronological order and shall be gradual as and when tenements get ready for occupation. While accommodating such persons to the membership it shall be ensured that (i) they really intended to secure tenements of the society at the time of acquiring shares and not for investment/any other purpose other than residential (ii) they are eligible to become members under the revisions of Bye-laws, Rules and the Act; (iii) they are willing and are in a position to contribute and possess the capacity to pay towards the cost of new tenements (iv) if requisite number of such eligible shareholders are not available it shall be open for this society to admit even outsiders to its membership. It should also be ensured that this process is not unduly delayed."

17. The aforesaid consideration of reasons by the Assistant Registrar by no

stretch of imagination can be said to be not in accordance with section 18 of the Act or that the Assistant Registrar has taken into consideration non-germane or irrelevant facts or that the Assistant Registrar has not considered the relevant and material facts or that the Assistant Registrar was influenced by observation made by Divisional Joint Registrar in its order dated 15-6-82. As a matter of fact, the learned Counsel for petitioner could not dispute the broad fact that the society has in all membership of about 762 comprising of 60 free holders, 60 leaseholders, 585 shareholders and 47 tenant members. The free holders are those members who had purchased society's land on outright sell and after purchase of society's piece of land, they have either built their own houses or have developed the land by constructing buildings thereon and have formed their own co-operative societies. Obviously, this class of 60 free holder members cannot be said to have sufficiently interest in the objectives of the petitioner society. Their continuance as the members of society and being in dominant control and management of the society has rightly been considered to be relevant factor essential for bifurcation of the society. Similarly, 60 leaseholders are the members who have the land of the society on lease for a period of 998 years. They have constructed their houses on leased land or have developed the land by constructing multi storeyed buildings which are in occupation of various other persons having their own co-operative societies. These members too cannot be said to have genuine interest in the objectives of the society except their personal gains in the name of society. Out of 585 shareholders, 300 are those members who have deposited a sum of Rs. 15,000/- each in anticipation of allotment of flats. 285 of such shareholders have even not deposited any amount. The Assistant Registrar cannot be said to have erred when he observed that this class of members is investor class of members. Obviously, this investor class of members also cannot have the interest in the objectives of the society since the only land which has been left with the society is 5.1/ 2 acres of land which is in occupation of 47 tenant members. The Assistant Registrar observed that large number of members were inducted by the society without making efforts to find out whether such large number of members could be accommodated by society or not. The four classes of membership definitely has affected the homogeneity of the society and the interest of the class of members comprising of free holders, leaseholders and shareholders is in direct conflict with the interest of tenant members. In this background, the consideration of the matter for bifurcation or division of the society by Assistant Registrar was perfectly based on relevant consideration and after consideration of the entire material when the Assistant Registrar found that division of existing society in two societies viz. Bombay Catholic Co-operative Housing Society Ltd. comprising of leasehold members, freehold land members, and others and the Bombay Catholic Co-operative (Tenants) Housing Society Ltd., comprising of tenant members is in the interest of the co-operative movement and for securing the management of the society, it cannot be said that the Assistant Registrar committed any error in reaching the said satisfaction. Ultimately, u/s 18, it is the satisfaction of the Registrar or the competent authority which is decisive as to

whether a society needs to be divided in the public interest or in the interest of cooperative movement or for better management of the society or not and when such satisfaction has been arrived at by the competent authority upon consideration of relevant facts and material in accordance with the relevant legal provisions, such satisfaction cannot be held to be vitiated. Though the learned Counsel for petitioner sought to urge that the order passed by the Divisional Joint Registrar on 19-9-89 and the order passed by the Revisional Authority on 24-6-91 were also bad in law for diverse reasons including consideration of non-germane matters and assumption of non-existent facts, for the reasons which I have already indicated above and the fact that the consideration of entire matter by the Assistant Registrar was in accordance with the legal provisions, it cannot be said that Divisional, Joint Registrar or the Revisional Authority erred in dismissing the appeal and the revision application. The reasons given by the Assistant Registrar collectively show that the bifurcation of petitioner-society had become imminent and for better management of society in accordance with its objectives, there was no escape but to order bifurcation. This Court while sitting in writ jurisdiction under Article 226 shall not interfere with an orders passed by the authorities specially constituted under the Act of 1960 when the same have been passed in exercise of the powers given to it under law and the said power has been exercised in accordance with law. While sitting in extraordinary jurisdiction, it is not competent for this Court to reappraise the facts as Court of appeal and substitute its own opinion. The satisfaction reached by the Assistant Registrar for bifurcation of petitioner society on the facts available before him is not vitiated by any error of law and having not been interfered with by an appellate authority or revisional authority cannot be substituted by this Court in its extra ordinary jurisdiction by reappraising the facts and therefore, I am not dealing with factual aspects which the learned Counsel for petitioner tried to urge to show that the order of bifurcation passed by the Assistant Registrar was not proper.

18. Before I close, I may deal with the submission of Mr. Joshi, learned Counsel appearing for some of the shareholders who were permitted to make their submissions not inconsistent with the submissions of the petitioner. The main submission of these shareholders members challenging the order of bifurcation is that the said order is harsh, arbitrary and in excessive exercise of power and jurisdiction.

19. The facts which I have already noted above which need not to be repeated, would rather show that the order passed by the Assistant Registrar for bifurcation of the society is not at all harsh or arbitrary or oppressive to the shareholder members. As a matter of fact, it is the tenant members who have been oppressed and this class of members have suffered at the hands of the majority members who have no longer sufficient or substantial interest in the objectives of the society. The Assistant Registrar has made it clear that the society formed of the tenants viz. Bombay Catholic Co-operative (Tenants) Housing Society Ltd., shall offer the tenements occupied by the tenant members

in the capacity of tenants in terms of Bombay Rent Act, to the same occupant tenant members on ownership basis if desired by the concerned tenant members against payment of reasonable consideration as may be fixed by the said society in consultation with the Co-operative Department and till that time, the status of the tenancy shall not be disturbed. The said direction indicates that there is no undue favour to the tenant members and a balance has been struck by the Assistant Registrar by providing Clause 7 in the operative order. So far as the shareholder members are concerned, the Assistant Registrar in its operative order has clearly set out that the admission of non-accommodated shareholders to membership of the newly created society viz. Bombay Catholic Co-operative (Tenants) Housing Society Ltd., shall be strictly according to the chronological order and shall be gradual as and when tenements get ready for occupation. The Assistant Registrar further directed that while accommodating such persons to the membership, it shall be ensured that these members really intended to secure tenements of the society at the time of acquiring shares and not for investment or any other purpose other than residential. He also directed that it would also be ensured that these persons (shareholder members) are eligible to become members under the revised Bye-laws, Rules and the Act and they are willing and are in a position to contribute and possess the new tenements. The Assistant Registrar, therefore, has taken sufficient care in ensuring that no injustice is occasioned to non-accommodated shareholders who are genuinely interested in accommodation and are eligible in securing residential accommodation. The shareholders who are eligible to become members under the revised Bye-laws and who genuinely were interested in getting the residential accommodation, according to their seniority shall get the accommodation as and when tenements would be ready for occupation. With this arrangement having been made by the Assistant Registrar how it can be said that the order of bifurcation shall oppress the class of shareholders or is detrimental to the interest of this class. Obviously, the shareholder member who were only interested in investment while becoming member of the society should be weeded out because it would not be in the interest of co-operative movement and for the well-being of the society. Thus, the contention of the learned Counsel for the shareholder members that the order of bifurcation is oppressive or harsh to this class of society is unfounded and appears to be at the behest of the petitioner-society. As a matter of fact, the appellate authority has considered the matter extensively and it cannot be said to have erred when it affirmed the order of Assistant Registrar. So far as revisional authority is concerned, the matter having been examined at quite length by the appellate authority, the revisional authority rightly did not go into the matter in details in its revisional jurisdiction and cannot be said to have erred in affirming the order of the Assistant Registrar and the appellate authority.

20. For all these reasons, I do not find any merit in the writ petition and accordingly, writ petition is dismissed. Rule is discharged. No costs.

21. The learned Counsel for the petitioner orally prays that the implementation of

the order of bifurcation passed by the Assistant Registrar be stayed for reasonable time. The learned Counsel for contesting respondents has no objection if for a period of eight weeks, the implementation of bifurcation order passed by the Assistant Registrar on 22nd February, 1983 confirmed by the appellate authority, revisional authority and by this Court today is stayed for a period of eight weeks.

22. Accordingly, for a period of eight weeks, the order of bifurcation dated 22-2-1983 shall remain stayed.

The parties may be provided ordinary copy of this order duly authenticated by Court Associate on payment of usual copying charges.

23. Writ petition dismissed.