

(2012) 08 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 578 of 2012

Vithal Nagar Co-operative Housing Society Ltd	APPELLANT
Vs	
Divisional Joint Registrar, CS, Mumbai Divison and Others	RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 154, 22(2), 73(1AB), 77, 78

Citation : (2012) 6 BomCR 295 : (2012) 6 MhLj 812

Hon'ble Judges : A.A. Sayed, J

Bench : Single Bench

Advocate : Shiraz Rustomjee with Mr. Viral Amin, instructed by Ms. B. Amin and Co, for the Appellant; Ravi Kadam with Mr. Shailesh Shah for Respondent No. 3, Mr. M.M. Vashi, Counsel for the Respondent No. 4, Mr. G.W. Mattos, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

Judgement

A.A. Sayed, J.—Rule. Learned Counsel waive service on behalf of respective Respondents. By consent of the learned Counsel, rule is made returnable forthwith and the Petition is heard finally. The Petition impugns an order-cum-show cause notice dated 9.11.2011 of the Respondent No. 2-Deputy Registrar, Co-operative Societies, K- West Ward, Mumbai and the order dated 17.1.2012 of the Respondent No. 1-Divisional Joint Registrar, Co-operative Societies, Mumbai Division, passed in Revision, wherein the aforesaid order-cum-show notice dated 9.11.2011 of the Respondent No. 2-Deputy Registrar was subjected to challenge.

2 The relevant portion of the impugned order-cum-show cause notice dated 9.11.2011 of the Deputy Registrar reads as under:

Whereas, out of 9 Managing Committee members who got elected in the year 2006, 7 Managing Committee members who are functioning as of today, committed default in not executing Bonds as per rule 58-A of Maharashtra Co-operative Societies Act, 1960. And therefore, as per Section 73 (1AB) of the Maharashtra Co-operative Societies Act, 1960, they, ceased to be members of the Managing Committee. Moreover, because of cessation of membership of 7

Managing Committee members out of total 9 Managing Committee members of the Society, the Managing Committee has come in minority. Therefore, you are called upon to submit an explanation in writing on 25/11/2011 as to why you should not be removed from the membership of the Managing Committee as per Section 78 of the Maharashtra Co-operative Societies Act, 1960...

3 The above order-cum-Show Cause Notice was initially challenged in this Court by filing Writ Petition No. 10091 of 2011. On 28.11.2011, the Division Bench of this Court (Coram: B.H. Marlapalle & Smt. Nishta Mhate, J.J.) passed the following order:

2. We have perused the impugned order-cum-Show Cause Notice dated 9.11.2011. In the first part of the impugned order, the Deputy Registrar of the Co-operative Housing Societies has recorded a finding that seven out of nine members of the Managing Committee have sustained disqualification u/s 73(1AB) of the Maharashtra Co-operative Societies Act, 1960 and therefore, the second part of the Show Cause Notice is based on the said finding.

3. The findings recorded for disqualification u/s 73(1AB) of the Maharashtra Co-operative Societies Act, 1960, could be challenged by filing Revision Application u/s 154 of the said Act.

4. Hence, the impugned Show Cause Notice is stayed for a period of two weeks from today and in the meanwhile the Petitioner-Society may approach the Revisional Authority u/s 154 of the Maharashtra Co-operative Societies Act and seek further appropriate orders.

5. The Petition is disposed of accordingly.

(emphasis supplied)

4. Thus, the Division Bench while relegating the Petitioner-Society to the Revisional Authority, made it clear that the order-cum-Show Cause Notice dated 9.11.2011 was in two parts. The first part was a finding of fact that 7 out of 9 members of the present Managing Committee had not executed Bonds pursuant to the elections held in the year 2006 and had sustained disqualification, and second part was that since the aforesaid Bonds were not submitted at that time by the said 7 members of the present Managing Committee, the Petitioner-Society was called upon to Show Cause why action should not be initiated u/s 78 of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act" for the sake of brevity) for their removal as members of the present Managing Committee.

5. Pursuant thereto, the Petitioner-Society filed Revision Application No. 446 of 2011 before the Respondent No. 1-Divisional Joint Registrar. By the impugned order dated 17.1.2012, the Respondent No. 1-Divisional Joint Registrar held that since the Petitioner-Society had not submitted copies of the Bonds executed in 2006 before any Authority, therefore, it is presumed that they had not executed Bonds in 2006. He held that the Bonds were submitted from 2008. The Respondent No. 1-Divisional Joint Registrar concluded that seven out of nine

Committee Members are deemed to have vacated their office in the year 2006 and held that the finding of the Deputy Registrar was correct. Thus, insofar as the first part is concerned, the Respondent No. 1-Divisional Joint Registrar concurred with the finding of the Respondent No. 2-Deputy Registrar that 7 out of 9 of the present Managing Committee members had not executed the Bonds in the year 2006 and had sustained disqualification. However, so far as the second part is concerned, the Respondent No. 1-Divisional Joint Registrar observed that since an opportunity is given by the Respondent No. 2-Dy. Registrar to show cause, the Respondent No. 1-Divisional Joint Registrar remanded the matter to the Respondent No 2-Deputy Registrar with a direction to take appropriate decision insofar as the action to be initiated u/s 78 of the MCS Act, 1960, which section inter alia deals with the removal of the Managing Committee or member thereof and appointment of an Administrator.

BACKGROUND FACTS:

6. On 14.10.1956, by a Deed of Assignment, the Petitioner-Society which is classified as a "Tenant Ownership Housing Society" under the Maharashtra Co-operative Societies Act, 1960 ("MCS Act" for the sake of brevity) purchased a plot of land from Bombay Housing Board (now MHADA) situated at Juhu Vile Parle Development Scheme (J.V.P.D. Scheme) that was divided into several plots which were leased out to its members on certain terms and conditions.

7. On 10.12.1965, the Plot No. 64 (hereinafter referred to as "the said Plot") on 12th Road, JVPD Scheme was leased out to one Shri Harbhagwan Malhotra for the purpose of residence and was allotted shares bearing distinctive Nos. 406 to 410. The said Shri Harbhagwan Malhotra Member expired in the year 1967. On 27.2.1981, an Indenture of Lease was executed in respect of the said Plot between the Petitioner-Society, as Lessor and the heirs of deceased Harbhagwan Malhotra (hereinafter referred to as "Malhotras"), as Lessees. On 1.10.2005, one Shri Mohite from the Co-operation Department of State of Maharashtra was appointed as an Administrator of the Petitioner-Society and was incharge of the said Society's affairs. The said Administrator, Shri Mohite by Advocate's notice dated 28.3.2006 purportedly terminated the lease of the said plot to the Malhotras on various grounds viz. attempting to assign the lease in favour of a third party without the consent of the Society, failure to develop and maintain the said plot, causing nuisance to other members of the Petitioner-Society etc. On 11.12.2006, the Malhotras allegedly assigned their right, title and interest in the said Plot to the Respondent Nos. 3 and 4 herein.

8. On 9.11.2006, a Dispute being Dispute No. 378 of 2006 was filed before the Co-operative Court, Mumbai against the Petitioner-Society by the Malhotras challenging the termination of the lease on 28.3.2006. It appears that upon their Application, the Respondent Nos. 3 and 4 herein were added as party-Disputants to the said Dispute. An Application also came be filed therein by the Respondent Nos. 3 and 4 inter alia seeking directions that the Petitioner-Society be restrained from obstructing sanction by the MCGM of their plans for development of the said

plot. The Application was allowed on 15.2.2008 which was set aside in Appeal by the Maharashtra State Co-operative Appellate Court on 8.7.2008. This order was challenged by the Respondent Nos. 3 and 4 in Writ Petition No. 5042 of 2009 which was came to be dismissed by an order dated 30.9.2009 and the hearing of the Dispute was expedited. In the meanwhile, the Dispute came to be dismissed for non prosecution and a restoration Application has been filed by the Respondent Nos. 3 and 4 which was apparently pending before the Co-operative Court at the relevant time.

9. On 18.10.2006, a learned Single Judge of this Court (Coram: Dr. D.Y. Chandrachud, J.) in Writ Petition No. 2657 of 2006 filed by some members of the Petitioner-Society, by an order dated 18.10.2006 directed the Registrar of Co-operative Societies to appoint an Officer under its control and supervision for holding election of the Managing Committee of the Petitioner-Society. On 26.12.2006, the Administrator's control over the affairs of the Society ceased and sometime in December end of 2006, fresh elections were held and pursuant thereto a new Managing Committee assumed office.

10. On 31.5.2007, the Managing Committee of the Petitioner-Society ratified the decision of the Administrator of termination of lease in respect of the said Plot. This decision of the Managing Committee was further ratified by the General Body of the Society at its AGM held on 8.11.2008.

11. On 21.6.2007, the Petitioner-Society received an Application dated 13.4.2007 from the Respondent Nos. 3 and 4 for transfer of the lease of the said Plot to their name and to admit them as members of the Petitioner-Society. The said Application was placed before the Managing Committee at its meeting held on 30.8.2007. However, the said Application came to be rejected by the Managing Committee of the Petitioner-Society on the ground that since the lease in respect of the said Plot in favour of Malhotras has been terminated by the Petitioner-Society, the Application for transfer of the lease could not be considered. The Respondent Nos. 3 and 4 and the Malhotras were informed about the same by letter dated 5.9.2007.

12. According to the Petitioner-Society, as the Application to admit the Respondent Nos. 3 and 4 as members of the Petitioner-Society came to be rejected, the Respondent No. 3 has started a campaign of harassment against the members of the Petitioner-Society and particularly the members of the Managing Committee. According to the Petitioner-Society, between years 2006-2011, the Respondent Nos. 3 and 4 have filed a plethora of proceedings against the Petitioner-Society in various Courts including Criminal proceedings with a view to harass and intimidate the Petitioner-Society and to force the Petitioner-Society to give in to their demands with regard to the said Plot. The Petitioner-Society has set out various proceedings filed by the Respondent Nos. 3 and 4 against the Petitioner-Society in the last five years which according to them were motivated, frivolous and vexatious which are enumerated hereinafter.

FACTS LEADING TO THE PRESENT PETITION:

13 The facts leading to the present Writ Petition are that on 16.7.2010, the Petitioner-Society received letter dated 15.7.2010 from the Respondent No. 2-Deputy Registrar stating that two members viz. Mrs. P.K. Valecha and Mrs. J. Valia have complained that the members of the Managing Committee of the Petitioner-Society have not executed M-20 Bonds. The Petitioner-Society was called upon to respond within 15 days failing which action under the MCS Act would be taken.

14. On 19.7.2010, the Petitioner-Society's Advocate addressed a letter seeking copies of the letters of Mrs. P.K. Valecha and Mrs. J. Valia and stated that the Bonds had been executed and would be furnished soon. In this letter, it was pointed out that the letter dated 15.7.2010 was served by Shri Narendra Awasthi and that it is Respondent No. 3 who was behind the two Complaints. On 23.7.2010, the Petitioner-Society forwarded copies of M-20 Bonds from the year 2008 to 2010 of Managing Committee members along with their Advocate's letter and a request was again made for copies of letters of Mrs. P.K. Valecha and Mrs. J. Valia. After couple of reminders, the Respondent No. 2-Deputy Registrar by letter dated 6.1.2011 furnished copies of the said letters to the Advocate for the Petitioner-Society.

15. On 14.1.2011, a Show Cause Notice was issued by the Respondent No. 2-Deputy Registrar to the Petitioner-Society in respect of a Complaint made by the Malhotras and Respondent Nos. 3 and 4 dated 27.12.2010 through their Advocate Shri Nachiket Bhatt. By the said letter dated 27.12.2010 of Advocate Shri Nachiket Bhatt, a Complaint was made to the Respondent No. 2-Deputy Registrar that since the Bonds in form M-20 were not filed by either by the Administrator as well as the Managing Committee members in the year 2006 within the prescribed period of 15 days under the provisions of Section 73 (1AB) of the MCS Act and Rule 58-A of the Rules thereunder, the Respondent No. 2-Deputy Registrar ought to exercise powers u/s 78 of the MCS Act, 1960 to dissolve the present Managing Committee and appoint Administrator in place and instead of the present Managing Committee.

16. The said Show Cause Notice dated 14.1.2011 was challenged in this Court by the Petitioner-Society by filing Writ Petition No. 1617 of 2011. By an order dated 29.8.2011, the Division Bench of this Court (Coram: D.D. Sinha & R.Y. Ganoo, J.J.) permitted the Petitioner-Society to withdraw the petition and granted liberty to challenge the order, if any, passed by the Respondent No. 2-Deputy Registrar, if it was adverse to the Petitioner-Society. The Application (Stamp) No. 17473 of 2011 which was filed by the Respondent Nos. 3 and 4 in the said Writ Petition interalia for a direction to appoint an Administrator was also disposed of in view of the disposal of the Writ Petition. The Petitioner-Society thereafter filed Reply as well as Written Arguments to the Show Cause Notice dated 14.1.2011. Pursuant thereto, the impugned order-cum-show cause notice dated 9.11.2011 was passed/issued by the Respondent No. 2-Deputy Registrar which was

subjected to challenge before the Respondent No. 1-Divisional Joint Registrar (after filing and disposal of Writ Petition before this Court as indicated earlier), who passed the impugned order dated 17.1.2012 which are the subject matter of challenge in the present Writ Petition.

17. I have heard Mr. Shiraz Rustomjee, learned Senior Counsel on behalf of Petitioner-Society, Mr. Ravi Kadam, learned Senior Counsel on behalf of the Respondent Nos. 3, Mr. Vashi, learned Counsel on behalf of Respondent No. 4 and Mr. Mattos, learned A.G.P. on behalf of Respondent Nos. 1 and 2.

SUBMISSIONS:

18. Mr. Shiraz Rustomjee, learned Senior Counsel for the Petitioner-Society made the following submissions:

(i) that the Respondent Nos. 3 and 4 having failed to obtain membership of the Petitioner-Society by legitimate means, have filed a plethora of false, motivated and malafide complaints and the proceedings against the Petitioner-Society and/or its office bearers. The intent of the Respondent No. 3 in doing so is to harass and intimidate the Petitioner-Society and to pressurise the Petitioner-Society to giving into his demands with regard to the said Plot. The attempts of the 3rd Respondent have been unsuccessful and in fact the Courts, including this Court have already made strong observations regarding the conduct of Respondent No. 3;

(ii) that the Respondent No. 3 is in the habit of adopting frivolous proceedings in order to attain his ends;

(iii) that the impugned order is based on malafide, collusion and it is abuse of process of law and the Respondent No. 2 is colluding with Respondent No. 3 and is acting at his behest with a view to further his cause in his private dispute with the Petitioner-Society. The Respondent No. 2-Deputy Registrar has therefore not exercised his powers bona fide for the statutory purpose for which he has been entrusted with;

(iv) that Affidavit dated 24.12.2010 of erstwhile Administrator Shri Mohite who was at the relevant time and presently is an officer of the Department of the Cooperation Maharashtra indicates the level of collusion and malafide conduct on the part of the Respondent No. 3;

(v) that the Respondent No. 2-Deputy Registrar has not exercised the statutory power in good faith and/or has been exercised for extraneous or irrelevant purpose, and therefore, it is illegal and must be quashed and set aside on that ground alone.

(vi) that the impugned order cum show cause notice dated 9.11.2011 is tainted with malafides and amounts to a colourable exercise of power.

(vii) that the proceedings initiated by the Respondent No. 2-Deputy Registrar is

hit by delay and latches inasmuch as the Bonds in question were required to be submitted in the early January 2007 and the Complaint filed by the Respondent No. 3 to the Respondent No. 2-Deputy Registrar is dated 27.10.2010 and the Show Cause Notice on the basis of Respondent No. 3's Complaint issued on 14.1.2011. Therefore, there has been delay of four years in initiating the present proceedings and in any event, there have been three/four elections of the Managing Committee of the Petitioner Society since then. The power that vested in Authority was to be exercised within a reasonable period of time and is therefore vitiated on the ground of delay in the facts and circumstances of the present case;

(viii) that the basis on which the order-cum-show cause notice dated 9.11.2011 and the order dated 17.1.2012 proceed is patently untenable and arbitrary; (ix) That according to the impugned order-cum-show cause notice, the members of the Managing Committee of December 2006 vacated office on account of non submission of Bonds and on the basis of this assertion, it is proposed to remove 7 members out of 9 members of the present Managing Committee and to appoint an Administrator. However, before this Court it is contended that subsequent elections of 2008, 2009, 2010 and 2011 of which 1/3rd members retired and fresh elections were held, is invalid. If that be so all 9 members of the present Managing Committee would have to be removed as none of them would have been validly elected. This, according to learned Senior Counsel, is not the case of the Respondent No. 2-Deputy Registrar in the order-cum-show cause notice and it does not proceed on this basis. The order-cum-show cause notice only purport to remove 7 members and does not propose any action in respect of the other 2 members who were not the Members of the Managing Committee of December, 2006. Therefore, the basis of the order-cum-show cause notice cannot be changed and be different than what has been mentioned in the impugned order-cum-show cause notice of Respondent No. 2-Deputy Registrar. It is impermissible in law to abandon the reasoning contained in the show cause notice or order and to seek to support it on a different one; (x) that the action proposed by Respondent Nos. 1 and 2 is in reality, action against the Managing Committee of December 2006 and that Committee does not exist and proceedings therefore invalid on that account. The Bonds were filed by the members of the Committee of December 2006 at the relevant time. And even assuming while denying that the Bonds were not executed by the Managing Committee of 2006 at the relevant time, Section 77 of the MCS Act provides inter alia that no act of a Society or Committee done in good faith in pursuance of the business of the Society should be deemed to be invalid by reason only of some defect, inter alia, in the Constitution of the Committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his office; (xi) that assuming that the members of the Managing Committee of December 2006 were deemed to have vacated office in January 2007 on account of a failure to execute Bonds, that would not invalidate the subsequent four elections of 2008, 2009, 2010 and 2011.

19. Learned Senior Counsel for the Petitioner-Society, in order to lay emphasis on the contention of conduct of the Respondent No. 3 and abuse of process of Court and the plea of malafide has highlighted various proceedings initiated by the Respondent Nos. 3 and 4 against the Petitioner-Society and/or members of the Managing Committee and made submissions thereon as under:

(i) Criminal Case No. MECR-07 of 2007

This Criminal Complaint was filed by the Respondent No. 3 against the office bearers of the Petitioner-Society making false allegations of physical intimidation at the instance of the Chairperson of the Petitioner-Society, who is elderly lady suffering from Parkinson disease. The Chairperson and the Hon. Secretary of the Petitioner-Society were arrested and detained in the police lock-up for two days after which they were released on bail. By an order dated 22.3.2010, both these persons were discharged as accused.

(ii) Criminal Case No. 1080/SS/2008

This Criminal Complaint has been filed by the Respondent No. 3 alleging criminal defamation by members of the Petitioner's Managing Committee. By an Order dated 16.2.2009, the Sessions Court quashed the process issued. The Respondent No. 3 challenged the said order in Criminal Application No. 1645 of 2009 which was dismissed by an order of this Court dated 2.5.2009. He has challenged that order by preferring an SLP on which notice has been issued and which is pending.

(iii) Criminal Case No. MISC/08/2010

This Criminal Complaint has been filed by the Respondent No. 3 in January 2010 alleging cheating, criminal breach of trust, forgery and criminal intimidation against various office bearers of the Petitioner-Society and the Petitioner-Society's Chartered Accountant. The members of the Managing Committee challenged the order directing investigation of the alleged offence in Criminal Application No..4467 of 2010. By an order dated 27th October, 2010, the proceedings were stayed. The submissions that the Complaint had been filed malafide with an intent to harass members of the Managing Committee has been accepted by this Court. While accepting the said submissions, this Court (Coram: Kanade,

J.) has observed as follows:

7. ... prima facie, case is made out for grant of ad-interim relief. The applicants are the members of the managing committee. No complaint has been filed against them by any of the members of the society. The Respondent No. 2 is not yet admitted as a member of the managing committee. Prima facie, it does appear that complaints are being filed with a mala fide intention of harassing them since they did not admit him as a member

By an order dated 27.1.2011, the said Application has been admitted and the

stay order continued.

(iv) Dispute No. 378 of 2006 in IVth Co-operative Court Mumbai:

In November 2006, the Malhotras filed this Dispute challenging the termination of the lease. Respondent Nos. 3 and 4 got themselves added as Disputants by an Intervention Application and then filed an Application inter alia seeking that the Petitioners be restrained from obstructing sanction by the MCGM of their plans for development of the said Plot. The Application was allowed by an order dated 15th February, 2008, which was set aside by an order in Appeal dated 8.7.2008. Respondent Nos. 3 and 4 challenged the said order dated 8.7.2008 in Writ Petition No. 5042 of 2009 which was dismissed as not prosecuted by an order dated 30.9.2009. The hearing of the Dispute was, however, expedited. The Dispute was dismissed for default on 3.2.2012 and a Restoration Application filed by the Respondent No. 3 who pending at the relevant time.

(v) Application No. 9 of 2007 for deemed membership:

In August, 2007, the Respondent Nos. 3 and 4 filed this Application for deemed membership u/s 22(2) of the Act. They were declared deemed members by an order dated 15.10.2007 which was confirmed by an order in Revision dated 15.7.2008. The Petitioner challenged the said order in Writ Petition No. 6114 of 2008. By an order dated 15.10.2008 the Petition was admitted and the operation of the impugned order was stayed.

(vi) Proceedings for an enquiry u/s 83 of the MCS Act:

In January 2009, the Respondent No. 3 made a Complaint seeking statutory enquiry into the working of the Petitioner-Society. Although the Petitioner pointed out that the Complaint was motivated and that the 3rd Respondent had no locus, the Deputy Registrar held that such an enquiry be held by an order dated 25.3.2010. The said order was challenged by the Petitioner in Writ Petition No. 817 of 2010, wherein, by an order dated 27.4.2010, the order was set aside and the 1st Respondent was directed to consider the Application of the 3rd Respondent afresh. Subsequent orders of the 1st Respondent were challenged by the Petitioner in Writ Petition No. 1609 of 2010. By an order dated 18.8.2010, the Petition was admitted and the impugned orders were stayed.

20. Learned Senior Counsel also pointed certain observations of the Sessions Court in CRA No. 469 of 2005 dated 28.9.2006 filed by one Shrinath Pushkarana & Ors., against the issuance of process on the Criminal Complaint filed by the Respondent No. 3, which are as under:

... Respondent No. 1/Complainant is using alleged criminal complaint for oblique purpose to suppress the opposition of Applicants/Accused and others who are similarly situated. This view is fully supported by previous complaints made by the applicants/Accused and all other residents of the building against the Respondent No. 1/Complainant.

... This incident cannot be believed for a moment. It is fictitious and cooked one and therefore Respondent No. 1/Complainant cannot be permitted to use criminal process by way of abuse of process of law and therefore it is liable to be quashed and set aside.

... I am fully convinced that Respondent-Complainant Gautam Patel is using the criminal court for oblique purpose for repressing the Applicants/Accused Nos. 1, 2 and 3 by filing frivolous complaint and there is no point in continuing the said prosecution therefore the Revision Application succeeds and it deserves to be allowed. I allow the revision application.

21. Learned Senior Counsel for the Petitioner-Society submitted that apart from the above, the following facts establish malafide conduct and exercise of powers by the Respondent No. 2 in collusion with Respondent Nos. 3 and 4:

(i) the office of Respondent No. 2 has repeatedly shown, and continues to show, a willingness to act upon the complaints of Respondent No. 3 with extreme alacrity regardless of their subject matter and validity, the background of the matter, or the prevailing situation;

(ii) this approach is, in fact, amply demonstrated by the present proceedings. The complaint is in respect of matters which transpired over five years ago and is, in fact, against the erstwhile Managing Committee of December 2006, whose term of office has long since concluded. Yet, action for removal of members of the present committee is sought to be taken by adopting an extreme stand that all actions taken since December 2006 are invalid.;

(iii) On the other hand, the 2nd Respondent has either ignored or been extremely slow to act upon the complaints and grievances of the Petitioner-Society. For instance, the 2nd Respondent took as long as six months to simply provide the Petitioners with a copy of the complaints of Smt. Valecha and Smt. Walia;

(iv) that it is an admitted position that the communication of the 2nd Respondent dated 15th July 2010, which was on the basis of the Complaint of Smt. Valecha and Smt. Walia, was delivered to the Petitioner by Mr. Narendra Avasthi, an employee of the Respondent No. 3;

(v) that at the instance of Respondent No. 3, the Respondent No. 2 has by an order dated 26.3.2010 ordered an enquiry

(albeit by another officer) into the affairs of the Petitioner-Society u/s 83 of the MCS Act; (vi) all the proceedings initiated by the Respondent Nos. 3 and 4, some of them through the office of the 2nd Respondent, have either been stayed or set aside at the level of this Court; (vii) that the contentions of Respondent No. 3 in Writ Petition (St.) No. 9450 of 2011 filed by him themselves display clear collusion and malafide conduct. The Respondent No. 3 has stated in para 3(xi) as follows:

On further inquiry, the Respondent No. 1 assured the Petitioner No. 3 that once

the notice period is over, he would immediately appoint the administrator as the managing committee members of Respondent society have continuously committed illegality since 2006 due to non-execution of M 20 bond, which are mandatory in terms of section 73(1AB) and Rule 58A of MCS Act. The Respondent No. 1 have also confirmed and admitted to the Petitioner No. 3 that he is fully convinced and as per his opinion there is no other alternative but to appoint the administrator by dissolving the managing committee of Respondent No. 2.

22. According to the learned Senior Counsel for the Petitioner-Society the allegations have not at any stage been refuted or denied by the Respondent No. 2 and no Affidavit in reply has been filed on his behalf and no attempt has been made to rebut the allegations of malafide. Learned Senior Counsel further submitted that the Affidavit of the erstwhile Administrator Shri. S.M. Mohite, who was at the relevant time and remains at present an officer of the Department of Cooperation, indicates the level of collusion and malafide conduct on the part of the Respondents. He submitted that the said Affidavit constitutes an undisguised and naked attempt to further the case of the 3rd Respondent. Shri. Mohite goes to the extent of disowning his own action as an Administrator and purports to withdraw a notice of 28.3.2006 on which action has been taken several years earlier. He seeks to do this although he is admittedly no longer the Administrator of the Petitioners and ceased to hold that position over five years ago. However, no action has been taken by against Shri. Mohite by the department.

23. Learned Senior Counsel further submitted that the history of the matter shows a consistent pattern of abuse of process and malafide proceedings in the form of criminal complaints etc being initiated by the 3rd Respondent further lends weight to the allegations of malafide.

24. Learned Senior Counsel submitted that when a statutory power is not exercised in good faith and/or has been exercised for an extraneous or irrelevant purpose, it is illegal and must be quashed and set aside on that ground alone. He submitted that in any event, the Court can examine the legal malafide even though the concerned party is not arrayed in his individual capacity. He has placed reliance upon the following judgments on the issue of malafide:

(i) S. Pratap Singh Vs. The State of Punjab , ,

(ii) State of Punjab and Another Vs. Gurdial Singh and Others, ;

(iii) Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, .

25. On the issue of non-filing of Bonds, the learned Senior Counsel on behalf of the Petitioner-Society submitted that the Bonds in M-20 form were infact submitted by the members of the Managing Committee of the year 2006 and that after they ceased to be members of that Managing Committee the said Bonds were returned to them. The learned Senior Counsel placed reliance on the following decisions on the issue of Bonds:

i) Jagannath Rajaram Patil & Ors. Vs. Asstt. Registrar of Cooperative Societies, F/ South Ward & Ors. dated 2.08.2001 in Writ Petition No. 2552 of 1998 of this Court

ii) Bhupesh M. Rathod & Ors. Vs. State of Maharashtra & Ors. dated 1.01.2010 of this Court in Writ Petition (L) No. 2588 of 2009.

26. Mr. Ravi Kadam, learned Senior Counsel on behalf of the Respondent No. 3, on the other hand, submitted as under:

(i) that after the death of Harbhagwan Malhotra, an Indenture of Lease was executed between his heirs and the Petitioner-Society. The Malhotras could not develop the said plot because their names could not be muted on Revenue Records as Lessees on account of failure on the part of the Petitioner-Society to produce ULC clearance and consequently, M.C.G.M. did not approve the Plans and therefore the heirs of Harbhagwan Malhotra were prevented from making construction on the plot;

(ii) that the delay in completing the registration was caused deliberately by some of the Managing Committee members who were interested in acquiring the said Plot at a throw away price who wanted to usurp the property for them. That the majority of the members of the Petitioner-Society had also strained relationship with the Administrator and that the Managing Committee had issued a Public Notice in the newspapers disowning and repudiating all the actions taken by the Administrator and declaring that the same were not binding upon the Petitioner-Society. Thus, the Petitioner-Society had also questioned the bonafides of the Administrator in issuing the termination notice. Pertinently, the Managing Committee while disowning all other actions of the Administrator, ratified the action of the Administrator of illegal issuance of the show cause notice of termination of lease to the said Malhotras;

(iii) that on 31.5.2007, the Petitioner-Society wrongly passed a Resolution ratifying the action of the Administrator in terminating the lease in respect of the said Plot by Advocate's notice dated 28.3.2006;

(iv) that the Petitioner-Society was formed to perform administrative duties and held the plots as trustees for its members who had paid the consideration for purchase. The Lease Deed in favour of Malhotras for a term of 999 years virtually grants the said Malhotras ownership of the said plot and that the said lease could not be terminated on the specious ground that they failed to develop the land and there was encroachment on the said plot and it was only because the Committee members were interested in grabbing the plot of the said Malhotras;

(v) that the Managing Committee of the Petitioner-Society while adopting illegal termination overlooked the law that no termination can take place as long as membership continues and therefore, the alleged ratification of termination would not hold any water unless the Malhotras were expelled from the membership and that the Managing Committee in furtherance of its intention to

grab the said Plot initiated totally untenable and false action for expulsion of the Malhotras and in September 2007 passed a Resolution expelling the Malhotras as members was malafide and non est as it was against the bye-laws of the Society and without giving an opportunity of being heard and in violation of principles of natural justice and that in any event it was without the approval of the Registrar of the Societies. The said Resolution was therefore rejected by the Deputy Registrar which was affirmed by the Divisional Joint Registrar. The Petitioner-Society moved the Minister of State for Co-operation which proceedings are pending; (vi) that the Criminal Proceedings were filed as one Kanta Kaushal on the basis of an absolutely forged document alleged to have been executed by the deceased the original member Mr. Harbhawan Malhotra 10 years after his death had managed to get her name entered on P.R. Card relating to the said Plot and the said Kanta Kaushal had also approached the Petitioner-Society to accept her as a member which was rejected by the Petitioner-Society on the ground that the documents of alleged transfer was forged and bogus. When the Respondent No. 3 adopted proceedings for deleting her name from the Property Card, the Managing Committee of the Petitioner-Society opposed his Application and supported the said Ms.. Kanta Kaushal and the Managing Committee was thus colluding with the said Kanta Kaushal whose claim was bogus only to deprive the Respondent Nos. 3 and 4 of the said plot;

(vii) that most of the Criminal Proceedings are sub judice this Court, therefore, it would not be proper to comment on the same;

(viii) that when malafides are alleged, the concerned Respondents have to be impleaded in their personal capacity and if this is not done, then the allegations of malafides cannot be countenanced and must be rejected and in the present case, the Respondent No. 2-Deputy Registrar has not been impleaded as party Respondent in his personal capacity;

(ix) that the observations of Justice V.M. Kanade are for the purposes of interim stay. Any comment by this Court on those proceedings would prejudice the said proceedings. As regards Mr. Pushkarna, he is a third party and the Respondent No. 3 is not concerned with him and the observations therefore in Pushkarna's matter are irrelevant for the present matter;

(x) that the identical and verbatim allegations were made in the earlier two Writ Petitions by the Division Bench of this Court which were ignored by the Court on both the occasions and the issues referred to in paras 7 to 12 of the petition are sub judice and pending final adjudication and this Court cannot be asked to sit in appeal nor go into merits of such pending matters to decide on the alleged malafides. As regards the incident of Mr. Narendra Avasthi is concerned, it has been explained that the said Mr. Avasthi being employee of the Respondent No. 3 was deputed to the office of the Respondent No. 2-Deputy Registrar to make some inquiries and some staff of the Deputy Registrar informed him that some notice/paper was required to be served on the Petitioner-Society and that when he went to serve them in the office of the Petitioner-Society, the same was found

locked. He, therefore, inquired with the said Mr. Avasthi whether he can guide the said representative of the Respondent No. 2-Deputy Registrar to the residence of the Hon. Secretary of the Petitioner-Society and the said Mr. Avasthi knew the residence of the Hon. Secretary of the Petitioner-Society, he innocently agreed to guide him. While returning to the office of the Respondent No. 3 the said Mr. Avasthi merely accompanied the man from the office of Respondent No. 2-Deputy Registrar to enable him to find the address and therefore this issue is unnecessarily raised is a non-issue; (xi) that the affidavit filed by the Administrator in the proceedings before the Co-operative Court was after the said Mr. Mohite realized his mistake;

(xii) that the protection u/s 77 can only be claimed for normal functioning of the Managing Committee and protection under the said Section cannot be claimed for violation of statutory acts where obligations are mandatorily required to be complied with and therefore since there was no Managing Committee since 2006, any act or illegality committed without authority cannot be protected under the said Act;

27. On the issue of non-filing of M-20 Bonds, Mr. Kadam, learned Senior Counsel on behalf of the Respondent No. 3 submitted that from the facts of the case it is clear that no M-20 Bonds were filed by all Managing Committee members in December 2006/January 2007 and that merely because 3 members who were elected in the year 2008, 2009 and 2010 filed the M-20 Bonds, did not mean that failure of others to file M-20 Bonds can be condoned and in any event 3 members could not have constituted Managing Committee as under the bye-laws of the Society there has to be 9 Managing Committee members. That there were concurrent finding of fact that the Petitioner-Society's members have failed to execute/file M-20 Bonds in 2006-2007 which finding of fact cannot be questioned in writ jurisdiction. The assertion that the M-20 Bonds were filed with the Society but returned back to the members is unbelievable and false and this case was made for the first time only in December 2012 in Written Arguments submitted in the Revision before the Respondent No. 1 and it was therefore an afterthought.

28. On the issue of necessity to join the party in his individual capacity by name, against whom malafides are alleged, the learned Senior Counsel for the Respondent No. 3 placed reliance upon the following judgments:

(i) M. Adbutha Rao Vs. Government of A.P., Irrigation and Cad Dept. & Ors. [(2001) Indlaw AP 314];

(ii)Gopala Krishna Belur & Ors. Vs. B.S. Yeddiyurappa,
Chief Minister, Karnataka & Anr. [(2010) Inlaw KAR 488];

(iii) Madhav Prasad Vs. Deputy Managing Director (P and S)
[(2004) Indlaw ALL 459]

29. Mr. Vashi, learned Counsel for the Respondent No. 4 (who is daughter of

Respondent No. 3), has supported the submissions of the learned Senior Counsel Mr. Kadam. He has further submitted that the impugned order of the Respondent No. 1-Divisional Joint Commissioner can be challenged u/s 154 of the MCS Act, 1960 before the Government, and therefore the present petition ought not be entertained.

30. Mr. Mattos, learned A.G.P. has adopted the submissions of the learned Senior Counsel Mr. Kadam insofar on the issue of non-submission of the M-20 Bonds are concerned. He further submitted that there was no question of malafides on the part of the Respondent No. 2- Deputy Registrar. He submitted that the concerned Deputy Registrar ought to have been made a party in his own name, if at all Petitioner-Society wanted to assert their contention regarding malafide. He placed reliance on the judgment of the Apex Court in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, .

31. I have considered the rival contentions raised on behalf of the parties.

32. At the outset, it may be stated that though elaborate arguments have been advanced before me on behalf of the Petitioner-Society and the Respondents as recorded hereinabove, the issues which arise for consideration in the petition really lie in a narrow compass, particularly as the Petitioner-Society has agreed for to go in for a fresh election of the Managing Committee, as stated hereinafter.

FRESH ELECTION

33. During the course of hearing, a suggestion was made by this Court that without going to the merits or otherwise of the matter and without prejudice to their rights and contentions and so as to obviate an eventuality of an Administrator being appointed, whether the Petitioner-Society is willing to go in for a fresh election of the Managing Committee.

34. Learned Senior Counsel for the Petitioner-Society in deference to this suggestion and on instructions from the Petitioner-Society, came back to the Court and fairly stated that in terms of what has been suggested by this Court, the Petitioner-Society is willing to go in for a fresh elections of the Managing Committee, keeping all their contentions open.

35. In view of the above, I have issued directions as set out in the operative part of this judgment as regards the holding of fresh elections of the Managing Committee.

36. In these circumstances, there would now be no necessity for the Petitioner-Society to show cause before the Respondent No. 2-Deputy Registrar as to why the members of the Managing Committee should not be removed u/s 78 of the MCS Act. The grievance of the Petitioner-Society to the 2nd part of the order-cum-show cause notice dated 9.11.2011 would therefore not survive.

MALAFIDE ACTION AND CONDUCT OF THE RESPONDENT NOS. 2/3.

37. Substantial part of the arguments were devoted by the learned Senior

Counsel for the Petitioner-Society on the purported malafide action by Respondent No. 2-Deputy Registrar in issuing the Show Cause Notice and the conduct of the Respondent No. 3. It was sought to be argued as stated earlier, that the impugned order-cum-show cause notice dated 9.11.2011 issued by the Respondent No. 2 is tainted with malafides and amounts to colourable exercise of power for extraneous and irrelevant purpose and was issued in collusion and at the instance of the Respondent No. 3 and therefore the same is bad in law and required to be quashed and set aside on that ground alone.

38. Insofar as the allegations of malafides against Respondent No. 2-Dy. Registrar are concerned, I find that the law on the subject of malafides is well settled. In absence of the party against whom the allegations of malafides have been levelled having been impleaded as party Respondent by name in their personal capacity, no enquiry into those allegations can be made.

39. In *State of Bihar Vs. P.P. Sharma (supra)*, the Hon"ble Supreme Court in para 55 held as under :

It is a settled law that the person against whom malafide or bias was imputed should be impleaded eo nomine as party Respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no inquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity.

In the present case, admittedly the concerned Deputy Registrar has not been impleaded by name in his personal capacity and therefore I do not deem it appropriate to consider the validity of the allegations of malafides against the concerned Deputy Registrar

40. Apart from the above, it is noticed that the impugned order-cum-show cause notice dated 9.11.2011 emanated from an earlier show cause notice dated 14.1.2011. This show cause notice dated 14.1.2011 was subjected to challenge by the Petitioner-Society by filing Writ Petition No. 1617 of 2011 in this Court. Pertinently, however, the said Writ Petition was withdrawn as recorded in the order dated 29.8.2011 (Coram: D.D. Sinha & R.Y. Ganoo, J.J.). While withdrawing the petition, no grievance appears to have been made by the Petitioner-Society that on account of malafide conduct of the concerned Deputy Registrar, the Petitioner-Society was not willing to go for hearing respecting the show cause notice before the same Deputy Registrar.

41. In the circumstances, the contention of the Petitioner-Society that the impugned order-cum-show cause notice ought to be quashed and set aside on the ground of malafides against the Respondent No. 2-Deputy Registrar, cannot be accepted.

42. Insofar as the conduct of Respondent No. 3, who the Court is informed is a Developer, and the allegations of malafides against him are concerned, in my

prima facie opinion it would not be incorrect to assume that the Respondent No. 3 does appear to exude a considerable amount of influence. I have perused the Affidavit, dated 24.12.2010 of Shri S.M. Mohite who was the erstwhile Administrator of the Petitioner-Society sometime in the year 2006. By the said Affidavit Shri Mohite, who continues to be in the employment of the Department of Co-operation, State of Maharashtra, purports to withdraw a notice dated 23.3.2006 after a period of almost 5 years after he had ceased to be an Administrator of the Petitioner-Society. In the said Affidavit, Shri Mohite has stated that he had inadvertently instructed Advocate Ms. Rupa B. Kadam at the relevant time when he was the Administrator to issue show cause notice dated 28.3.2006 on the basis of misinformation, ill advise and lack of knowledge and without realizing its subsequent consequences. As to what prompted Shri Mohite to make this Affidavit after almost half a decade disowning his own action is indeed curious and require some more explaining to do by the said Shri Mohite. However, as Shri Mohite is not a party to these proceedings, I

would not like to say anything further.

43. That said, it is however equally curious to note the manner in which the leasehold rights of 999 years in respect of the said Plot belonging to Malhotras (which rights have purportedly been assigned to the Respondent Nos. 3 and 4) have been terminated by the said Administrator Shri Mohite at the relevant time, and the Petitioner-Society, whilst disowning other actions of the Administrator, having ratified the action of the Administrator in respect of the termination of the lease of the said Plot.

44. I would only conclude, insofar as the issue of the conduct of Respondent No. 3 (at whose instance the present proceedings were initiated) is concerned, by saying that even assuming that the Respondent No. 3 may have genuine grievances so far as he and Respondent No. 4 being denied membership by the Petitioner-Society and consequently to the lease-hold rights in respect of the said Plot is concerned, it is hoped that wiser counsel would prevail and the Respondent No. 3 would henceforth show some restraint in adopting proceedings, at least personally, against the members of the Managing Committee of the Petitioner-Society and I leave it at that.

45. It must, however, be stated that I am conscious of the fact that the aforesaid issue as regards conduct of Respondent No. 3 or for that matter the Petitioner-Society may be subjudice. It is therefore clarified that the aforesaid observations are only prima facie and would not in any manner influence the final outcome of the proceedings in which the aforesaid issue has been raised and is pending determination.

NON FILING OF M-20 BONDS:

46. The statutory provisions in respect of filing of Bonds are contained in Section 73(1AB) of MCS Act (which was inserted by Maharashtra Act 41 of 2000 and brought into force w.e.f. 23.8.2000) and Rule 58-A of MCS Rule (which was

introduced by Notification dated 18.2.2002). They read as under:

Section 73(1AB)

The members of the committee shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. The members of the committee shall be jointly and severally be responsible for the acts and omissions detrimental to the interest of the society. Every such member shall execute a bond to that effect within fifteen days of his assuming the office, in the form as specified by the State Government by general or special order. The member who fails to execute such bond within the specified period shall be deemed to have vacated his office as a member of the committee.

Provided that

Rule 58-A

Every elected member of the Managing Committee shall execute a bond in Form M-20 within fifteen days of his assuming office. Such bonds shall be executed on stamp paper as provided under the Bombay Stamp Act, 1958. The expenditure on stamp paper shall be borne by the society. The Chief Executive Officer/ Secretary of the society shall receive such Bonds and keep them on record of the society and accordingly inform the Registrar within fifteen days from the formation of the Committee.

47. It is required to be noted that the Byelaws of the Petitioner Society provide that the minimum members of the Managing Committee shall be 9 and every year, 3 members of the Managing Committee shall retire by rotation and 3 new members shall be elected at the Annual General Meeting.

48. Undoubtedly, the provisions contained in Section 73(1AB) of MCS Act are mandatory and the consequence of not executing bonds within the prescribed period of 15 days of assuming office would result in vacation of the office by the members of the Managing Committee by operation of law. There are two judgments of two Division Benches of this Court viz- (i) Assisi Cooperative Housing Society vs. State of Maharashtra, 2007 (2) Bom CR 403 and (ii) Gulab Rameshnath Khote vs. State of Maharashtra, 2008 (1) Bom CR 252, which in terms have held so.

49. Perusal of the impugned order-cum-show cause notice dated 9.11.2011 would reveal that the Respondent No. 2 - Deputy Registrar has arrived at a finding of fact that 7 out of 9 existing Managing Committee members who were Managing Committee members pursuant to the elections held in December 2006 had not executed the M-20 Bonds. This finding of fact has been upheld by the Respondent No. 1-Divisional Joint Registrar. The learned Senior Counsel on behalf of the Petitioner-Society has not been able to point out any perversity in this finding of fact arrived at by the Authorities below. In view thereof, no fault can be found in this concurrent finding of fact of the Authorities and the same does not warrant any interference by this Court in exercise of writ jurisdiction.

50. However, insofar as the impact or consequence of non-execution of Bonds by the Managing Committee members constituted pursuant to the elections of December 2006 on the present Managing Committee members is concerned, it is noticed that in the impugned order-cum-show cause notice, it is stated as follows:

Therefore, as per Maharashtra Cooperative Societies Act, 1960, Section 78, why you should not be removed from the membership of the Managing Committee...

The aforesaid sentence would indicate that the Respondent No. 2-Deputy Registrar had granted an opportunity to show cause why 7 out of 9 members of the present Managing Committee should not be removed from membership of the present Managing Committee as they had not executed M-20 Bonds in December 2006/January 2007. In Revision, as far as this issue is concerned, the Respondent No. 1-Divisional Registrar has merely remanded the matter back to the Respondent No. 2-Deputy Registrar, without expressing any opinion. The contentions of the Petitioner-Society therefore as regards delay and latches for the action of removal being taken, the impact of 4 subsequent elections having been held in the years 2008, 2009, 2010 and 2011 and section 77 of the MCS Act were open to be argued before the Respondent No. 2 - Deputy Registrar. Thus, the issue as regards the removal of the members of the present Managing Committee who had failed to execute M-20 Bonds in December 2006/January 2007 was still at large before the Respondent No. 2 - Deputy Registrar. It needs to be borne in mind that the issue of non-execution of Bonds and sustaining disqualification by members of the 2006 Managing Committee is one thing, and the removal of those members from the membership of the present Managing Committee (as consequence of the non-execution of Bonds by the said members of the 2006 Managing Committee) is quite another.

51. Inasmuch as the Petitioner-Society has fairly agreed for a fresh election of Managing Committee, there would now be no necessity for the Respondent No. 2-Deputy Registrar or for this Court to go into the issue of the impact or consequence of the non-execution of Bonds by the members of the Managing Committee of year 2006, on the present Managing Committee.

DELAY AND LATCHES:

52. It is argued by the learned Senior Counsel for the Petitioner-Society that the initiation of the present proceedings itself is hit by delay and latches inasmuch as the M-20 Bonds in question were required to be submitted in early January 2007 and the show cause notice on the basis of the Complaint of Respondent No. 3, is dated 14-1-2011 and therefore there is a delay of 4 years in initiating the present proceedings and that in any event 4 elections of the Managing Committee of the Petitioner-Society have been held since and that the impact of section 77 of the MCS Act has also not been considered before the issuance of the show cause notice. It is therefore contended that the initiation of the present proceedings would be vitiated inter alia on the ground of delay and latches and this aspect has not been considered by the Authorities below.

53. Though prima facie, I do find substance in the above legal submission of the learned Senior Counsel on behalf of the Petitioner-Society, it may be stated that there has been no proper debate before me on this point of delay and latches and I have not been shown any authoritative judicial pronouncement on this aspect. I have therefore, without expressing any final opinion on this issue sustained the factual finding arrived at by the Authorities below as regards the non-filing of M-20 Bonds by the then members of the Managing Committee pursuant to the elections held in December 2006. There can be no quarrel on the issue that the provisions contained in Section 73(1AB) of MCS Act are mandatory and that the consequence of not executing the Bonds within the prescribed period of 15 days of assuming office would result in vacation of the office by the members of the Managing Committee by operation of law. This has been held so, even by two Division Benches of this Court as indicated earlier. Prima facie though, I find it hard to accept that because the members of a Managing Committee of a Society did not execute the M-20 Bonds within the prescribed period, until an Administrator is appointed u/s 78 of the MCS Act who would hold elections of the Managing Committee, all the actions and decisions taken by the Society during the interregnum through subsequent Managing Committee would be set at naught for all times to come, on account of lack of competence, which period in a given case may even be decades. That, in my prima facie view would be an extreme proposition and would not be in sync with the cooperative movement. In any case, this issue is an important issue that needs to be determined in an appropriate case after a proper debate and certain parameters may be required to be laid down after construing section 77 of the MCS Act and I do not deem it appropriate to express any final opinion on this aspect in the present case where the issue is somewhat diluted as the Petitioner-Society has agreed to go in for a fresh election of the Managing Committee. None of the judgments cited before me specifically deal with the issue of delay and latches read in conjunction with section 77 of the MCS Act.

54. The contention of Mr. Vashi, learned Counsel on behalf of the Respondent No. 4, that the impugned order of the Respondent No. 1 -Divisional Joint Registrar can be challenged in Revision before the Government u/s 154 of the MCS Act and therefore the present petition ought not to be entertained, cannot be accepted in view of the decision of the Full Bench of this Court in the case of Shireen Sami Gadiali vs. Spenta Co-op Hsg Soc. Ltd, 2011 (3) Mah LJ 486, wherein it has been held that the order passed in exercise of revisional jurisdiction cannot be subjected to scrutiny in exercise of revisional jurisdiction again under the provisions of Section 154 of MCS Act. Even otherwise, this contention on behalf of the Respondent No. 4 ought to have been raised at the very outset as a preliminary objection and not at the fag end after the matter has consumed more than 3-4 afternoon sessions of hearing of arguments by the learned Senior Counsel on behalf of the Petitioner-Society, learned Senior Counsel on behalf of Respondent No. 3 and learned A.G.P.

55. In the result, for the reasons mentioned above, I pass the following order:

O R D E R

- i) The Registrar of Cooperative Societies is directed to appoint not later than 2 weeks from today, an officer under his control and supervision other than Respondent No. 2 herein, to hold the elections to the Managing Committee of the Petitioner-Society;
 - ii) The election shall be held and concluded expeditiously and in any event not later than 15th November 2012;
 - iii) In view of the above directions, there would be no necessity for the Petitioner-Society or the members of the Managing Committee to show cause before the Respondent No. 2-Dy. Registrar against their removal as members of the Managing Committee or for appointment of an Arbitrator u/s 78 of the MCS Act.
 - iv) The finding of fact by the Authorities below that 7 out of 9 present Managing Committee members who were appointed pursuant to the elections held in December 2006 had not executed the M-20 Bonds as per section 73(1AB) of the MCS Act and rule 58-A of the MCS Rules in December 2006/January 2007 and therefore had ceased to be members of that Managing Committee, is maintained;
 - v) The contention on behalf of the Petitioner-Society that the impugned order-cum-show cause notice issued by the Respondent No. 2 - Deputy Registrar is tainted with malafides and amounts to colourable exercise of power, shall stand rejected.
 - vi) The issue of delay and laches and the impact of subsequent elections coupled with the applicability of section 77 of the MCS Act, is left open.
- Rule is disposed of in the aforesaid terms. In the facts and circumstances of the case there shall be no order as to costs.