

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 175 OF 2005

1. Matru Ashish Co-op. Hsg. Soc. Ltd.)
39, Napean Sea Road, Mumbai-400 036)
2. Shashikant R. Doshi)
Matru Ashish Co-op. Hsg. Soc. Ltd.)
39, Napean Sea Road, Mumbai-400 036).Petitioners

vs.

1. The State of Maharashtra,)
(Notice to be served through the Secretary to the)
Govt. of Maharashtra, Co-operation & Textiles Dept.,)
Mantralaya, Mumbai-400 032)
2. Under Secretary to the Government of Maharashtra)
Co-operation and Textiles Department, Mantralaya,)
Mumbai-400 032)
3. Divisional Joint Registrar, Co-operative Societies,)
Mumbai Division, Malhotra House, 6th floor,)
Opp. GPO, Mumbai-400 001)
4. Deputy Registrar, Co-operative Societies, A Ward,)
Malhotra House, Opp. GPO, Mumbai-400 001)
5. The Commissioner for Co-operation & Registrar of)
Co-operative Societies, Maharashtra State,)
Central Buildings, B.J. Road, Pune.).Respondents

Mr. Sachin Kudalkar, instructed by M/s. Madekar & Co., for the petitioners.
None for the respondents.

CORAM: P.B. MAJMUDAR &
R.M. SAVANT, JJ.

DATE: OCTOBER 05, 2011.

ORAL JUDGMENT: (Per R.M. Savant, J.)

The issue in the above petition is as regards the challenge to the order dated 1st August, 2001 issued by the State Government in exercise of the powers under Section 79-A of the Maharashtra Co-operative Societies Act, 1960 (for short “the Act”). By the said order, the State Government had directed the Co-operative Housing Societies in the State to charge non-occupancy charges on a particular basis. The said issue had come up for consideration before a Division Bench of this Court in Writ Petition No. 2635 of 2001. The Division Bench by its judgment and order dated 2nd March, 2007 in the matter of *Mont Blanc Co-operative Housing Society Ltd. and another vs. State of Maharashtra and others*¹, inter alia, held that the power under Section 79-A of the Act cannot be exercised so as to be prejudicial to the interest of the Society. The Division Bench has further held that the directions in question issued are binding on the Co-operative Housing Societies. Paragraph 12 of the said report is material and is reproduced herein under.

“12. Section 79-A of the Act clearly states that if the State Government, on receipt of a report from the Registrar or otherwise, is satisfied that in the public interest or for the purpose of securing proper implementation of co-operative production or for preventing the affairs of the society being conducted in a manner detrimental to the interest of the members, it is necessary to issue directions to any class of

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societies generally, it may issue directions to them from time to time and all societies concerned shall be bound to comply with such directions. As per sub-section 2 of Section 79-A the State Government may modify or cancel any directions issued as above and in modifying or cancelling such directions may impose such conditions as it may deem fit. Sub-section 3 of Section 79-A provides for a penal action for failure in complying with any directions or modified directions issued to a society under sub-sections 1 and 2 and failed without any good reasons or justifications to comply with the directions. Whereas Section 14 empowers the Registrar to call upon the society in the manner prescribed to make the amendments in its bye-laws if the same is found to be desirable in the interest of such society and amendments are required to be made within such time as he may specify. In the case of Karvenagar Sahakari Griha Rachana Sanstha Maryadit (supra), the Registrar had issued directions on 19/1/1985 to the effect that the tenant ownership type of co-operative housing societies should amend their bye-laws so as (i) to enable the plot holders to construct multi-storied building with more than one residential tenement on their plots and (ii) to form a society of the owners of the flats of the multi-storied building which shall be a member of the housing society and be represented by its representative in the housing society. When it was informed by the Registrar that the amendments as directed were not carried out, he issued a Circular on 5/12/1985 threatening to take action under Section 14 (2) of the Act. These directions/circulars were challenged by the housing societies, inter alia, on the grounds that they completely destroy the basis of such societies and would encourage commercialisation of housing schemes which is meant for individuals on the basis of the tenant-ownership and that they were without authority of law and violative of Article 19 (1) (c) of the Constitution. The societies succeeded before this Court and, therefore, the State Government approached the Apex Court. The objects and bye-laws of the Society were considered by the Apex Court and it held that though the power is conferred to direct amendment of the bye-laws of the society, yet the paramount consideration, while amending the bye-laws, is the interest of the society. So also the power of the State Government to issue directions in

public interest cannot be exercised so as to be prejudicial to the interest of the society. The Apex Court further observed,

“...In our view, what is in the interest of the society is primarily for the society alone to decide and it is not for an outside agency to say. Where, however, the Government or the Registrar exercises statutory power of issuing directions to amend the bye-laws, such directions should satisfy the requirement of the interest of the Society....”

The petitioners have relied upon the judgment in the case of Zoroastrian Co-operative Housing Society Ltd. and anr. vs. District Registrar, Co-operative Societies (Urban) and Ors. [(2005) 5 SCC 632: 2005 (5) ALL MR (S.C.) 731]. In our considered opinion the said judgment is not applicable in the instant case.

In the case of Sahabro Kacharu Patil and ors. vs. Collector, Aurangabad and ors. [1983 Mh. L.J. 476], a Division Bench of this Court, regarding the scope of Section 79-A of the Act, stated thus:

“It can then be seen that Section 79-A of the said Act deals with the powers of the Government to give directions in public interest. This section only shows that these directions are issued to the Co-operative Societies for the purpose of securing proper implementation of the co-operative production and other development programmes. They are concerned with the business of the affairs of the Society being conducted in a manner detrimental to the interest of the members, or of the depositors or the creditors thereof. The Government is also empowered under this Section to modify those conditions.”

2. In view of the said pronouncement of the Division Bench in

Mont Blanc's case, the issue in so far as the present petition is concerned stands concluded. However, the learned counsel for the petitioners states that he has no instructions from the petitioners in the matter and, therefore, cannot proceed with the hearing. In our view, since the issue is already concluded by the Division Bench judgment in Mont Blanc's case, there is no merit in the above petition which is accordingly dismissed. Rule discharged.

P. B. MAJMUDAR, J.

R.M. SAVANT, J.