

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8647 OF 2022

CHINTAMANI PANDEY ... Petitioner

*Versus*DIVISIONAL JOINT REGISTRAR OF CO-OP ... Respondents
SOCIETIES , MUMBAI DIV. & Ors.Mr. S. T. Pandey with Ms.Angela Singha i/b. Ms.Bindu Tiwari for the
Petitioner.

Ms.Vaishali S. Nimbalkar, AGP for the State.

Mr.Aditya S. Lele, for Respondent No.3.

CORAM: G. S. KULKARNI, J.**DATED: FEBRUARY 03, 2023**

ORAL ORDER

1. This petition filed under Article 226 of the Constitution of India assails an order dated 14 June 2022 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, whereby the revision application as filed by the petitioner under Section 154 of the Maharashtra Co-operative Societies Act,1960 (for short the 'MCS Act') has been dismissed. In the revision application, the petitioner had challenged an order dated 3 March 2022 passed by the Deputy Registrar, Co-operative Societies, D/E-Ward, Mumbai, passed under Section 75(5) of the MCS Act, whereby the petitioner was disqualified for being

elected and for being an office bearer or a member of the managing committee, for a period of five years for the reason that in the capacity as Secretary of respondent No.3-Paras Nagar Co-operative Housing Society Ltd.(for short “**the Society**”) the petitioner had failed to comply with the vital obligations to hold annual general meeting. It is in such meeting all the important actions of the managing committee including of approving financial matters/accounts, takes place.

2. The genesis of the action as taken by the respondent-Registrar against the three office bearers of the society, namely against the Chairman (who has since expired), the Secretary (the petitioner), and the treasurer, was on the basis of an inspection, which was undertaken by the Registrar as per the provisions of Section 89A of the MCS Act. Such order to undertake an inspection was issued by the Registrar of Co-operative Societies on 14 July 2021. Accordingly, an inspection was undertaken of the affairs of the society. An inspection report dated 3 January 2022 was prepared by Mr.Suresh V. Khedkar who was appointed as Inspector. Such report was submitted to the Deputy Registrar of Co-operative Societies, K/East Division, Mumbai. The inspection report is a detailed report, which has been placed on record on behalf of the State as annexed to the reply affidavit of Shri.Sanjay Sanduji Raut, Deputy

Registrar, Co-operative Society.

3. In the context of the issues which arise for consideration of the Court in the present proceedings, it is relevant to note the provisions of Section 75(5) of the MCS Act, whereunder the petitioner has been disqualified for a period of five years, with the other office bearers.

Section 75 reads thus:-

“Section 75 - Annual general body meeting.

(1) Every society shall, within a period of [four months after the close of the financial year, get its books of accounts audited and within six months after the close of financial year to transact its business as may be provided in this Act, call the annual general body meeting of its members].

[Amendment of section 75 of Mah. XXIV of 1961.

3. In section 75 of the principal Act, in sub-section (1),-

(a) before the existing proviso, the following proviso shall be added, namely :-

“Provided that, for the financial year 2019-2020, the society may get its books of accounts audited within nine months from the close of its financial year and call the annual general body meeting within twelve months from the close of its financial year.”

(b) in the existing proviso, for the words “Provided that,”, the words “Provided further that,” shall be substituted.]

Provided further that, where such meeting is not called by the society, the Registrar or any officer authorized by him may call such meeting in the manner prescribed and that meeting shall be deemed to be a general body meeting duly called by the society, and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.

(2) At every annual general body meeting of a society, the committee shall lay before the society,-

(i) a statement showing the details of the loans, if any, given to any of the members of the committee or any member of the family of any committee member, including a society or firm or company of which such member or members of his family is a member, partner or director, as the case may be; the details of repayment of loan made during the preceding year and the amount outstanding and overdue at the end of that year;

(ii) annual report of its activities;

(iii) plan for disposal of surplus;

(iv) list of amendments of the by-laws of the society, if any,

(v) declaration regarding date and conduct of its election of its committee, when due;

(vi) audit report of the preceding financial year;

(vii) rectification report of earlier audit;

(viii) annual budget for next year ;

(ix) any other information required by the Registrar in pursuance of any of the provisions of the Act and rules; and

(x) such other business, will be transacted as may be laid down in the by-laws and of which due notice has been given.

Explanation I.—For the purposes of this sub-section, the expression “family” means a wife, husband, father, mother, brother, sister, son, daughter, son-in-law or daughter-in-law ;

Explanation II.—In the case of a society not carrying on business for profit, an audited income and expenditure account shall be placed before the society at the annual general body meeting instead of audited profit and loss account, and all reference to audited profit and loss account, and to “profit” or “loss” in this Act, shall be construed in relation to such society as references respectively to the “excess of income over expenditure”, and “excess of expenditure over income”.]

[(2A) Every society shall, appoint an auditor or auditing firm from a panel approved by the State Government in this behalf in its annual general body meeting having such minimum qualifications and experience as laid down in section 81, for the current financial year and shall also file in the form of return to the Registrar, the name of the auditor appointed and his written consent for auditing the accounts of the society within a period of thirty days from the date of the annual general body meeting:

Provided that, the same auditor shall not be appointed for more than three consecutive years by the annual general body meeting of the same society.]

[Amendment of section 75 of Mah. XXIV of 1961.

3. In section 75 of the principal Act, after sub-section (2A), the following sub-section shall be inserted, namely : (Mah, Act. No. 31/2020)

“(2B) The Committee shall, in the financial year 2020-2021, have the power to decide on the disposal of surplus and annual budget for the next year and to appoint an auditor or auditing firm from a panel approved by the State Government in this behalf having such minimum qualifications and experience as laid down in section 81. The decisions of the Committee in respect of the above matters shall be laid in the annual general body meeting of a society held thereafter for ratification.”.]

(3) There shall be attached to every balance sheet laid before the society in general meeting, a report by its committee, with respect to (a) the state of the society's affairs ; (b) the amounts, if any, which it proposes to carry to any reserve either in such balance sheet, or any specific balance sheet; and (c) the amounts, if any, which it recommends, should be paid by way of dividend, bonus, or honoraria to honorary workers. The committee's report shall also deal with any changes, which have occurred during the year for which the accounts made up, in the nature of the society's business. The committee's report shall be signed by its chairman, or any other member authorised to sign on behalf of the committee.

(4) At every annual general body meeting the audited balance sheet, the audited profit and loss account, audit report of the preceding financial year submitted by the auditor appointed

under section 81, rectification report of earlier audit and the committee's report shall be placed for adoption and such other business will be transacted as may be laid down in the by-laws, and of which due notice has been given.]

(5) If default is made, in calling a [general body meeting within the period] prescribed under sub-section (1), or in complying '[with sub-section (2), (2A)] (3) or (4), the Registrar may by order declare any officer or member of the committee whose duty it was to call such a meeting or comply [with sub-section (2), (2A),] (3) or (4), and who without reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified for being elected and for being an officer or member of the committee for such period [not exceeding five years], as he may specify in such an order and, if the officer is a servant of the society, impose a penalty on him to [pay] an amount not exceeding '[five thousand rupees]. Before making an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him.

(6) Any penalty imposed under sub-section (5) or under [section 76], may be recovered in the manner provided by the [Code of Criminal Procedure, 1973], for the recovery of fines imposed by a Magistrate, as if such fine was imposed by the Magistrate himself."

(emphasis added)

4. In regard to the action being taken against the petitioner, what is relevant to be seen in the report are the contents of paragraphs (30) and (31) which are to the effect that the managing committee, of which the petitioner was a member did not comply with the provisions of law and the rules, by convening an Annual General Meeting (for short 'AGM') before 30 September 2018 in the year 2017-18. No explanation for such

default whatsoever was offered. Further, in regard to the subsequent year 2018-19, although an AGM was proposed on 29 September 2019, however, the same was not held. The report observes that as a consequence of such defaults, which were mandatory compliances, the annual audit report for the financial year upto 2018-19, the financial certificate, and the accounts were not approved, as also were not furnished to the members of the society. Again no explanation whatsoever was offered in that regard. The report hence observes that there was a breach of Section 75(5) of the MCS Act and the provisions of the bye-laws. The relevant observations in the report in paragraph 30 and 31 are required to be noted which read thus:

(Official Translation of marked portion typewritten in Marathi.)

“(30) The Managing Committee of the Society has not called Annual General Meeting for the Year 2017-2018, till the date 30th September, 2018. The Society has not given any reply or explanation for the same and has thus violated Section 75 (5) of the Maharashtra Co-Operative Societies Act, 1960 and Rules, 1961 framed thereunder and the provisions of bye-laws.

(31) The Managing Committee of the Society had organised Annual General Meeting for the Year 2018-2019, on the date 29th September, 2019. However, the said Annual General Meeting has not been held. Hence, Audit Report and Financial Statement, Balance Sheet upto the Financial Year 2018-2019 have neither been approved in the Meeting nor given to other members of the Society. The Society has not given any reply or explanation for the same and has thus violated Section 75 (5) of the Maharashtra Co-Operative Societies Act, 1960 and Rules, 1961 framed thereunder and the provisions of bye-laws.”

5. It appears that when the inspection report was brought to the notice of the petitioner and the other office bearers, the petitioner addressed a letter dated 17 January 2022 to the Deputy Registrar purportedly intending to comply with the deficiencies in the report. Such letter as addressed by the petitioner again is not placed on record by the petitioner.

6. Be that as it may, on 31 January 2022 in pursuance of the inspection report, a show cause notice came to be issued to the petitioner and the other office bearers as to why an action under Section 75(5) of the MCS Act ought not to be taken against these office bearers, to disqualify them from being elected and from being the officers or members of the committee for a period of five years, as stipulated by the said provision. A reply to the show cause notice was called upon to be submitted on or before 14 February 2022. Learned Counsel for the petitioner has fairly stated that a specific reply to the show cause notice was not submitted by the petitioner and what was submitted before the Registrar on 25 February 2022 are the written submissions/ written arguments, a copy of which is annexed at page 56 of the petition. It is seen from the written submission/written arguments, that the contents

of the show cause notice, were sought to be denied on the ground that the inspection officer had not verified the record of the society, and if the record was to be appropriately verified, it would have revealed that the AGMs for the year 2017-18 and 2018-10 were conducted, of which the minutes were recorded and kept in the record of the society. The minutes of the AGMs were also sought to be relied upon in the written submission. It was being contended that an action under Section 75(5) of the MCS Act was initiated only after the election process was declared, so as to create a hurdle in the smooth election process. It was contended that the allegations in the show cause notice as also in the inspection report under Section 89A were illegal, false, frivolous, hence, the show cause notice be withdrawn. The Deputy Registrar on the basis of such report and submissions, heard the petitioner and by an order dated 3 March 2022 exercising powers under Section 75(5) of the MCS Act interalia disqualified the petitioner for a period of five years from holding the position of an office bearer of the managing committee.

7. The petitioner, being aggrieved by the said orders passed by the Deputy Registrar, Co-operative Societies, moved the Divisional Joint Registrar, Co-operative Societies in a revision application, praying that the order dated 3 March 2022, passed by the Deputy Registrar, be set

aside. By the impugned order, the Divisional Joint Registrar after examining the rival contentions, has rejected the revision application as filed by the petitioner. The Divisional Joint Registrar in the impugned order has observed that admittedly the petitioner was the Secretary of the society at the relevant time. He has observed that the Inspection Officer conducted an appropriate enquiry also inquired regarding the holding of AGM in the year 2017-18 and 2018-19. It was observed that initially no documents were produced before the Inspection Officer during the course of inspection, to show that any AGM was held. It was observed that the treasurer of the society in the reply dated 9 February 2022 submitted before the Deputy Registrar, had admitted that the AGM's for the year 2017-18 and 2018-19 were not held within the stipulated period. Accordingly, the Divisional Joint Registrar held that there was no material to indicate that such AGM's were held. It was hence held that the petitioner alongwith the other officer bearers violated the provisions of Section 75 of the MCS Act, and accordingly, the petitioner's revision application was dismissed.

8. In assailing the impugned order passed by the Divisional Joint Registrar, the present petition came to be filed on 7 July 2022. On behalf of the respondent No.2, an exhaustive affidavit dated 19 October

2022 of Mr.Sanjay S. Raut, Deputy Registrar, Co-operative Societies, annexing all the documents relevant to the order dated 16 June 2022 passed by the Divisional Registrar, are placed on record. What is pertinent to be seen in such reply, is the communication dated 9 February 2022 of respondent no.3-Society to the Deputy Registrar in which the society's treasurer responded to the inspection report, and on the issue relating to non holding of AGM's during 2017-18 and 2018-19 within the stipulated time, the following explanation was offered:-

(Official Translation of marked portion typewritten in Marathi.)

(30) The Managing Committee of the Society has not called Annual General Meeting for the Year 2017-2018, till the date 30.09.2018, because we had called A.G.M. in the month of October due to religious occasion (Jain – Paryushan parva) of the Society.

(31) The Managing Committee of the Society had called Annual General Meeting for the Year 2018-2019, on the date 29.09.2019 and Agenda of the said meeting was given to all members. However, father of the Secretary of the Society had died on the date 27.09.2019 at native place and hence, the Secretary was suddenly required to go to his native place and other members of the Managing Committee were going to conduct A.G.M. But other members did not conduct A.G.M. and when the Secretary returned from his native place, COVID Pandemic had started spreading and hence, A.G.M. was not held.”

9. It is thus, clearly stated in paragraph 30 of the reply of the society that AGM for 2017-18 was not held. Also, in so far as the year 2018-19 was concerned, the AGM was not held, as it was stated that the

Secretary (Petitioner) was required to leave the town as his father expired on 27 September 2019. It is pertinent to note that although such explanation was offered in such letter dated 9 February 2022, however, it is different from what was urged by the petitioner in the written submissions, as filed before the Deputy Registrar, which was in the nature of reply to the show cause notice. The fact however remains that for whatever reasons the society and the petitioner purported to furnish, the AGM for these two years was not held and that no acceptable and reasonable explanation was furnished, for not holding the AGM. The consequence under the bye-laws as also under the law would view such lapse quite seriously, that too in the case of a large cooperative housing society having 137 members.

10. Respondent No.3-Society has filed a reply affidavit of Mr.Vipul Jain, the treasurer who in paragraph 8 has categorically averred that no AGM was conducted in the year 2017-18 and 2018-19 and that no attendance sheet was submitted before the authorities by the petitioner.

The relevant part is required to be noted which reads thus:

“8. I say that, The Petitioner at EXHIBIT ‘M’ (to the Petition) in his response to the show cause notice dt. 10.02.2022 admits that. Annual General Body Meeting was conducted for both the years i.e., 2017-2018 and 2018-19. Even, during the proceedings before the Respondent No. 1, the Petitioner has not allegedly submitted any attendance sheet along with the alleged

minutes of the meeting. I say that, there was nothing to prevent the petitioner from submitting the alleged minutes with attendance list if there was any. I say at the cost of repetition that, no Annual General Body Meeting was conducted in the year 2017-18 & 2018-19.”

This is the factual backdrop of the present case.

11. On such conspectus, the learned Counsel for the petitioner in assailing the impugned order would submit that the AGM for the year 2018-19 could not be held as his father had expired, although he fairly conceded that this was not the contention as raised in the reply or in the written submissions to show cause notice. Learned counsel for the petitioner, however, submits that it ought to be considered that the powers under Section 75(5) of the MCS Act can be exercised, only when there is no reasonable explanation. It is his contention that a reasonable explanation was available on record and hence, harsh action of disqualifying the petitioner for five years ought not to be taken. To support such contention, learned Counsel for the petitioner has placed reliance on the decision of a Coordinate Bench of this Court in the case “Gaurav K. Desai vs. The State of Maharashtra” (Writ Petition No.11699 of 2014, decided on 6 February 2015). It is his submission that on such contentions the impugned order deserves to be quashed and set aside.

12. On the other hand, learned AGP appearing for the official respondents has submitted that this is a case wherein there was an appropriate inspection report which was submitted by the Deputy Registrar dated 4 January 2022 under Section 89A of the MCS Act in which in paragraphs 30 and 31 a clear default on the part of the office bearers was recorded for not conducting AGM for said two years. She submits that there is no challenge to the report by any of the office bearers including the petitioner. She submits that after following appropriate procedure of issuing a show cause notice, an action was taken against the petitioner - office bearers under Section 75(5) of the MCS Act. She submits that in fact, the petitioner should have indicated the documents which were germane and relevant, however, the same are produced by the official respondents in the reply affidavit, which clearly go to show that there was no dispute in regard to the fact that the AGMs for the said two years were not held. She therefore, submits that the petition deserved to be dismissed for all such reasons.

13. Learned Counsel for the society has placed reliance on the reply affidavit of Mr.Vipul Jain, treasurer, to contend that the present writ petition is filed by the petitioner on false facts, as also the grounds taken by the petitioner are not maintainable which cannot be called upon to

be examined under the writ jurisdiction of this Court. He has pointed out to the various averments as made in the reply affidavit and more pertinently to the averments as made in paragraphs 7 to 10 of the reply affidavit which interalia states that no AGM was held during 2017-2018 and 2018-19. It is further submitted that after the order was passed by this Court on 10 October, 2022, on the night of 10.10.2022, the Petitioner along with one Pankaj Pandey took the keys of the Society office from the watchman's cabin and opened the office of the Society and which was captured in the CCTV footage of the Society. The averments in that regard are required to be noted which reads thus:-

10. I say that, on the night of 10.10.2022, the Petitioner along with one Pankaj Pandey who is a defaulter member took the keys of the Society office from the watchman cabin directly and opened the office of the Society. The abovesaid incident is clearly seen in the CCTV footage of the Society. I say that, thereafter the Petitioner and one Pankaj Pandey has swamped through cupboards of the Society Office incessantly and it remains unknown as to what was accessed from the cupboards of the office. I say that, it is the submission of the Managing Committee and Members of the Society that it remains unknown why the Petitioner had this urgent need to go to the office of society late at night without all the members of the managing committee present and access the records of the Society one night prior to the records being handed over to Respondent No. 2. I say that, the Petitioner was completely aware that the register of minutes of meeting was going to play an important role in the present petition. Hereto annexed is a Pen drive which has recordings of the Petitioner and one Pankaj Pandey at EXHIBIT 'B'."

14. It needs to be noted that during the course of hearing of this petition, several anomalies including the suppression of documents, as also such glaring conduct of the petitioner was discussed and pointed out to the learned Counsel for the petitioner, including the fact that the eagerness of the petitioner to contest election was not a matter of legal right as such right is conferred by law.

Reasons & Conclusion :-

15. On the above conspectus I have heard learned Counsel for the parties and with their assistance, I have perused the record and the impugned order.

16. At the outset, it is required to be noted that the present petition is a classic case of an abuse of the process of law. The following discussion would aid the conclusion. It is a settled principle of law that a litigant who invokes the jurisdiction of this Court under Article 226 and 227 of the Constitution, is required to approach the Court with clean hands and without suppressing any materials whatsoever, much less by suppressing documents, which are material for adjudication of the proceedings. It is required to be noted that the petitioner has left no stone unturned in suppressing material facts and most importantly the inspection report, as

also the relevant replies to the inspection report, which are placed on record by the official respondent/State Government and the society. It is on this ground alone the petition would be required to be dismissed. There also appears to be an oblique intention of the petitioner to keep such materials away from the Court.

17. Be it so, as to what is the case of the petitioner on merits can be considered and which would further show that the petitioner has approached this Court with a brazen false case. The Deputy Registrar of the co-operative societies, exercising powers under Section 89A of the MCS Act, after a proper notice being issued to the society, when the society was being governed by the managing committee comprising of the petitioner as the 'Secretary', caused an inspection of the affairs of the society. All the relevant documents were examined and a detailed report came to be submitted by the Deputy Registrar as noted above. Such report apart from several anomalies being discussed and being pointed out, a statutory default, touching the provisions of Section 75(5) of the MCS Act, namely non-holding of the two AGM's was recorded. It was noted that for the period of the said two financial years namely for the years 2017-18 and 2018-19 AGMs were not held. In the written submissions of the petitioner, which is considered to be a reply to the

show cause notice, there is nothing worth which included abuses and allegations on the official machinery. Moreover, a bare perusal of the petitioner's written submissions would indicate that such submissions are far from being a bonafide reply to the show cause notice. It is further clear that there was no material whatsoever with the petitioner to justify his conduct as the 'Secretary' of the society in answering such show cause notice. This apart, there was abundant material on record that the AGM for the said years was not held. This has also been confirmed by the affidavit of the treasurer himself, who was an office bearer of the society, not only before this Court but also in the response to the inspection report, a copy of which is placed on record by the State Government. Needless to observe that in the event of a default in not holding the AGM, the consequences are set out in Section 75(5) of the MCS Act, as noted above.

18. The only contention as urged on behalf of the petitioner is that there were minutes of the AGM, which would show that the AGM was held, however, as rightly pointed out on behalf of the society/respondent No.3 from paragraph 8 of the affidavit that the petitioner had not submitted any attendance sheet alongwith the alleged minutes of the meeting. The contents of paragraph 8 are already noted above. It thus

appears that there are some attempts on the part of the petitioner to create record of the AGM, apart from canvassing a patently false case before this Court. Further, such document appears to be a totally bogus document in the absence of semblance of particulars in regard to the attendance sheet of the members in any such meeting being produced before the concerned authority, at the relevant time. Such documents are brought before this Court for the first time, that too in the compilation being submitted at the time of arguments which is also not on any affidavit, so as to contend that the meeting was attended by some members. This clearly shows as to why such document was not part of the original proceedings. Thus the clear attempt of the petitioner is to misguide the Court. It is thus clear that there is much substance in the contention as urged on behalf of the society as stated in paragraph 1 of the affidavit that the petitioner's case is a false case on fabricated documents.

19. The entire and the only thrust of the petitioner's arguments before the Court, despite the above glaring facts, is that the petitioner should be permitted to contest the forthcoming elections of the managing committee. Learned Counsel for the petitioner has forcefully argued that the intention of the petitioner is that he ought to be permitted to

participate in the forthcoming election. He submits that the petition be admitted and an interim order be granted and subject to outcome of the petition, the petitioner be permitted to contest the election. One would wonder as to how such relief is being sought despite a mountain of difficulties in the petitioner's way, as noted above. It is also quite astonishing as to how such plea is being taken when the facts are gross and more significantly considering the conduct of the petitioner. To accept such plea, the first hurdle the petitioner would be required to cross is either to persuade the Court to set aside the impugned order or point out a strong prima facie case that the concurrent findings in the orders passed by the authorities below are illegal and perverse. It may however be said that even remotely such case is not made out.

20. The record also indicates that there are some financial irregularities, and in that regard, a notice was issued to the petitioner. The nature of the irregularities was to the extent that the petitioner had issued a cheque of Rs.5,30,000/- from the society's account in favour of his son. Further certain amounts, the details of which were kept blank were sanctioned in the managing committee's meeting presided over by the petitioner. Thus, certainly there was a motive for the petitioner to continue to be in charge of the record of the society and hold on to the

post of Secretary and for which he intends to contest the elections of the society and pursue the present proceedings.

21. Before parting, it needs to be observed that there is a vital object which Section 75 of the MCS Act intends to achieve having a direct bearing on the financial discipline which the co-operative societies need to maintain, in relation to their books of accounts which are required to be audited. In such context, after the close of the financial year, an obligation is cast on the Managing Committee that a general body meeting is called for. A proviso was incorporated to sub-section (1) of Section 75 by Maharashtra Act 16 of 2013, whereby the Registrar is conferred a power to call for such meeting, which shall be deemed to be a general body meeting, so as to examine the compliances. Such is the importance of an annual general meeting as mandated by the provision. Further, sub-section (2) of Section 75 provides for the items / essentials to be laid before all the members of the Society, in the annual general meeting, which is an obligation on the Managing Committee. These essentials are set out in sub-clauses (i) to (x). These are crucial as also critical facts in regard to the administration and management of the Society, including on issues having a financial bearing on the affairs of the Society. The disclosure of such particulars bring about an

accountability in relation to the administration/ management and on finances. Further Sub-section 2A provides for an audit of the Society's accounts by appointing an auditor / auditing firm, from a panel approved by the State Government. Sub-sections (3) and (4) of Section 75 interalia provides for the balance-sheet as also the audited balance-sheet and profit & loss account, alongwith audit report to be placed before the members of the Society in an annual general meeting. It is in such context sub-section (5) is required to be read. Considering the vital compliances to be furnished by the managing committee, at the annual general meeting, sub-section (5) makes a provision for non compliance of such mandate and penalises the default in the event an annual general meeting is not held. Thus, what is reflected from the provisions of Section 75 is the return of the trust as reposed in the managing committee by the members of the society. Any default in such compliances directly amounts to a trust deficit and a failure of obligations to be discharged by the members of the Managing Committee, the reasons may be anything bonafide or otherwise, which the facts in a given case may unfold. On a plain reading of Section 75, it is clear that the legislative intent behind this provision does not contemplate any laxity or a casual approach on the part of the managing committee, when without reasonable cause, members of the managing

committee fail to comply with the provisions of sub-section (1), (2), (2A), (3) or (4) of Section 75. As to what is a reasonable excuse as sub-section (5) would postulate, is certainly required to be considered with objectivity, keeping in mind the legislative purpose and intention, behind the provisions of Section 75. The managing committee of the society is the ultimate repository of the trust which the members of the society repose in such elected members of the managing committee. The law would not accept any allowance that the managing committee and its members can act *de hors* the interest of its members or their actions become destructive to the fiduciary capacity in which they are supposed to discharge their duties towards the society, in adhering to the provisions of law and the bye-laws of the society. There cannot be any other reading of Section 75. In the present case, the petitioner as the office bearer has certainly and without any reasonable cause defaulted in the compliances mandated by Section 75, in not holding an AGM, for reasons which appear to be far from reasonable, much less bonafide. Moreover, his actions were against the interest of the members of the Society, as rightly observed by the authorities below in passing the impugned orders. The petitioner has in fact suppressed material facts while approaching this Court as also the contentions raised by the petitioner are certainly false.

22. For the above reasons, the writ petition certainly cannot be entertained and deserves to be dismissed. It may also be observed that precious judicial time was not required to be spent on such frivolous petition. The petition is accordingly, dismissed with cost of Rs.3,00,000/- (Rupees Three lakhs only), to be deposited by the petitioner with the Maharashtra State Legal Services Authority. The cost be paid within four weeks from the day a copy of this order is made available on the website of the High Court. In the event, the amount of cost is not deposited, the Member Secretary of Maharashtra State Legal Services Authority shall initiate proceedings for recovery of the costs as per law, which be recovered as arrears of land revenue. Ordered accordingly.

23. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J)