enuka WP NO. 15358 OF 2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15358 OF 2023

WITH

INTERIM APPLICATION (L) NO. 30509 OF 2026

Ramdas Baban Kate **...Petitioner**

V/s.

1. Divisional Joint Co-operative Societies, Pune Division, Pune

2. Deputy Registrar Co-operative Societies, Pune City (3), Pune

3. Dhanraj Charansingh Birda **...Respondents**

Mr. Drupad Patil *with Mr. Suyash Sule for the Petitioner.*

Mr. Anandsingh Bayas *with Mr. Daulat Hinge, Mr. Swapnil Sangle and Mr. Prithvirajsingh Bayas for Respondent No. 3.*

Ms. S. D. Chipade*, AGP for Respondent-State.*

CORAM: SANDEEP V. MARNE, J.

RESD. ON: 26 OCTOBER 2026.

PRON. ON: 3 NOVEMBER 2026.

JUDGMENT:

1) Petitioner is aggrieved by the Order dated 12 October 2023 passed by the Divisional Joint Registrar Co-operative Societies, Pune

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Division Pune, (**Divisional Joint Registrar**) dismissing his Revision Application No. 283 of 2023 and confirming the order dated 30 January 2023 passed by the Deputy Registrar, Co-operative Societies Pune City (3) (**Deputy Registrar**). By Order dated 30 January 2023, the Deputy Registrar has disqualified the Petitioner from being a managing committee member as well as from being elected or nominated as managing committee member for a period of five years under the provisions of Section 154B-23 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**).

2) The land bearing Survey Nos. 210 and 211 situated at Village-Wakad, Tq.-Mulshi, District-Pune, were originally owned by Bhalchandra Dev and his family members. For development of Pimpri Chinchwad New Town, the land admeasuring 39 H, 26R from survey No. 210 and 1 H 23 R from survey No. 211 was acquired on 23 September 1986 by an award made under Section 11 of the Land Acquisition Act, 1894. The owners preferred an application to the Government and showed readiness to handover the possession of around 25 acres of land to Pimpri Chinchwad New Development Town Authority and to transfer remaining land of around 76 acres in favour of four co-operative housing societies for accommodating poor and needy persons. The application of the owner was allowed and order dated 7 July 1992 was passed by the Government directing the Collector to take requisite steps. Accordingly, Mr. Bhalchandra Dev and others executed four release deeds in favour of four societies namely Rama Society, Yashomala Society, Ishan Society and Ankita Society.

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3) Ishan Co-operative Housing Society was registered on 24 July 1992 whereas Ankita Co-operative Housing Society was registered on 21 July 1992. One Smt. Anjali Shashak Nivasarkar, sister of Mr. Rajiv Bhale was appointed as the chief promoter of Ishan Society. One Mr. Suhas Bhalchandra Gosavi, General Manager of M/s Rama Automobiles owned by Mr. Rajiv Bhale was appointed as the chief promoter of Ankita Society. Release deed of land admeasuring 29.87 acres was executed in favour of Ishan Society and Release deed of land admeasuring 2.01 acres was executed in favour of Ankita society.

4) Joint layout of the lands bearing Survey No. 210/3 and 210/4 was prepared and approved. The two societies executed Development Agreements dated 27 April 1995 in favour of M/s Yashraj Builders Pvt. Ltd of Mr. Rajiv Bhale. The land allotted to Ishan society was divided into 249 plots. Between 2001 to 2007, promoters of the Ishan society allotted 194 plots to 181 persons on lease of 999 years. However, inspite of allotment of plot on lease membership was not given to the lessees. Therefore, allottees submitted application seeking membership of Ishan Co-operative Housing Society. By common order dated 23 March 2015, the Deputy Registrar allowed the Application filed by several persons and directed that the said persons had acquired the status of deemed members under Section 22 (2) of the MCS Act. The order passed by the Deputy Registrar was confirmed in revision by the Divisional Joint Registrar by order dated 29 July 2019. This is how Petitioner as well as Respondent No. 3 acquired membership of Ishan Society by virtue of orders passed by the Deputy Registrar and the Divisional Joint Registrar.

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5) It appears that elections of the Ishan Society were not conducted for a considerable period of time. Therefore, by order dated 14 December 2015, Mr. R. S. Bhujbal, District Special Auditor Class-I was appointed to conduct the audit of Ishan Society and Ankita Society. The auditor submitted a report for the years 2001 to 2013 highlighting various irregularities by the promoters of the societies. Acting on the report of the auditor, the Deputy Registrar appointed Board of Administrators to take over charge of Society's records for conduct of elections vide order dated 5 September 2019. The said order was confirmed by the Divisional Joint Registrar on 16 March 2021 and by the Hon'ble Minister on 24 March 2021. Accordingly, the Board of Administrators took charge of the records of the society and also took steps for conduct of elections. Accordingly, elections to the managing committee of Ishan Society were conducted on 14 November 2021 under which Petitioner and other members were elected as managing committee members. Petitioner also became the Chairman of the society.

6) Respondent No. 3 was not enrolled as member of the society and made an application dated 29 November 2021 to the chairman/secretary of Ishan Society seeking copies of various documents. Respondent No. 3 forwarded the said application to Deputy Registrar. By letter dated 15 December 2021, the Deputy Registrar directed the society to supply copies of the demanded documents. Society sent reply to the Deputy Registrar taking a stand that Respondent No. 3 is not a member of the society and was therefore not entitled to demand copies of any documents.

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7) It appears that Respondent No. 3 applied on 7 April 2022 seeking disqualification of managing committee members under provisions of Section 154B-23 of the MCS Act. The Deputy Registrar passed order dated 14 July 2022 disqualifying the Petitioner for a period of five years. The Petitioner preferred Revision Application No. 282 of 2022 before the Divisional Joint Registrar challenging the order of disqualification dated 14 July 2022. By order dated 27 October 2022, the Divisional Joint Registrar remanded the proceedings to the Deputy Registrar for fresh adjudication. In the remanded proceedings, the Deputy Registrar again passed order dated 30 January 2023 disqualifying the Petitioner from being a member of managing committee for a period of five years. Petitioner filed Revision Application No. 283 of 2023 before the Divisional Joint Registrar. However, by order dated 12 October 2023, the Divisional Joint Registrar has dismissed the revision preferred by the Petitioner. Petitioner has accordingly filed the present Petition challenging the orders dated 12 October 2023 passed by the Divisional Joint Registrar and 30 January 2023 passed by the Deputy Registrar.

8) By order dated 6 March 2025, this Court granted ad-interim stay to the disqualification order. By further order dated 7 April 2025, this Court has admitted the Petition and has continued the interim stay until further orders.

9) Respondent No. 3 has filed Interim Application (L) No. 30509 of 2026 seeking vacation of interim stay. Instead of deciding the application for vacation of stay, the Petition is taken up for final hearing

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and disposal with the consent of the learned counsel appearing for parties.

10) Mr. Patil, the learned counsel appearing on behalf of the Petitioner submits that the Deputy Registrar and the Divisional Joint Registrar have mechanically passed the order of disqualification without appreciating the factual circumstances, particularly the fact that the very membership of Respondent No. 3 itself was under a cloud, thereby justifying the Petitioner's decision not to furnish the demanded documents. He further submits that the Board of Administrator appointed to conduct the elections prepared a voter's list, which did not include the name of Respondent No. 3. He submits that the Board of Administrator had clearly prepared a list of members of the society and had excluded the name of Respondent No. 3, who had failed to pay the amount towards allotment of the plot. That the list so prepared by the Board of Administrator did not include the name of Respondent No. 3. That Petitioner became office bearer of the society by virtue of first election conducted in the year 2019 and at that time, proper records of the society were not available for verifying or preparing the membership register. He submits that Petitioner therefore genuinely believed that Respondent No. 3 was not a member, who was entitled to seek documents. He submits that without considering the mitigating circumstances, the Deputy Registrar mechanically proceeded to disqualify the Petitioner. He relies on judgment of this Court in ***Shashikant M. Ramane and Ors. V/s Joint Registrar Co-operative Societies***[1] in support of his contention that order of disqualification

[1] Writ Petition No. 7757 of 2026 decided on 1 July 2026

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cannot be mechanically passed without taking into consideration the reason for non-supply of demanded documents. He submits that in ***Shahid Tamboli and Ors. V/s Divisional Joint Registrar Co-op. Societies and Ors***.[2], this Court has held that disqualification for violation of the provisions of Section 154B-8(2) of the MCS Act is not automatic. Although the expression "without any reasonable or justifiable cause" does not find place in Section 154B-23 of the MCS Act, the Registrar is entitled to consider the existence of a reasonable or justifiable cause while deciding the issue of disqualification. That in the present case, there was justifiable cause of Petitioner not to supply demanded documents to Respondent No. 3. That Respondent No. 3 was not paying maintenance dues and is otherwise in habit of demanding several documents from time to time for the purpose of putting the managing committee into difficulties. He prays for setting aside the impugned orders.

11) Mr. Bayas, the learned counsel appearing for Respondent No. 3 opposes the Petition. He submits that Petitioner and Respondent No. 3 acquired membership of the society by virtue of same orders passed by the Deputy Registrar and Divisional Joint Registrar. That therefore Petitioner was fully aware about valid membership of Respondent No. 3 but deliberately created a false picture before the Deputy Registrar that he was not member of the society. That the provisions of Section 154B-8 of the MCS Act are mandatory in nature and that, upon noticing any violation thereof, the Registrar is justified in ordering the disqualification of the erring members of the Managing Committee. He

[2] (2023) SCC OnLine Bom 1479

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submits that in the present case, there is deliberate violation of provisions of Section 154B-8 of the MCS on the part of the Petition. That Petitioner is singularly running the entire society without holding elections. That he has manipulated the records of the society. He submits that immediate disqualification of the Petitioner is therefore warranted in the facts and circumstances of the present case. In support of his contentions, he relies on judgments of this Court in ***Shashikant M. Ramane*** (supra), ***Vijay Kashinath Bagade V/s Deputy Registrar Co-op Societies and others***[3], ***Nair Pushpa Sureshkumar and Ors. V/s State of Maharashtra and Ors.***[4], ***Shahid Tamboli*** (supra) and ***The Cosmos Co-op. Bank Ltd. V/s M/s Durgesh Tube India and Ors***.[5] Mr. Bayas prays for dismissal of Petition.

12) Rival contentions urged on behalf of parties, now fall for my consideration.

13) Respondent No. 3 demanded copies of various documents by letter dated 29 November 2021. He contended in his Application that he is member of the society, who was granted membership in the year 2015 by the Deputy Registrar. He claims residence in Plot No. 99. He stated that he had demanded all the documents relating to elections held on 15 November 2021 which were not supplied to him. Additionally, he sought copies of following documents (i) minutes of all annual general meetings and special general meetings from the date of registration of the society.

[3] (2026) BHC-AS: 33149

[4] 2025 SCC OnLine Bom 5201

[5] (2026) BHC-AS: 29661-DB

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(ii) society's 'I' and 'J' register (iii)all audit reports of the society from the date of its registration.

14) Respondent No. 3 appended cheque of Rs. 1,000/- alongwith Application dated 29 November 2021 and also showed willingness to pay further amount towards copying charges, if required. It appears that copy of letter dated 29 November 2021 was addressed by Respondent No. 3 to several authorities including Deputy Registrar. The Deputy Registrar directed the Chairman/Secretary of the society by letter dated 15 December 2021 to supply documents as per the bye-laws.

15) Petitioner was functioning as the Chairman of the society when requisition for documents was received by the society. Petitioner gave response dated 17 December 2021 to the Deputy Registrar emphatically contending that Respondent No. 3 was not member of the society. He invited attention of Deputy Registrar to the letter dated 25 May 2021 by which Deputy Registrar's permission was sought for launching criminal prosecution in respect of misappropriation of amount of Rs. 7,16,00,000/-. The Petitioner contended that instead of granting such permission, the Deputy Registrar erroneously forwarded the letter submitted by Respondent No. 3, who was not even a member of the Society. It was on this ground that the Petitioner categorically refused to furnish any of the demanded documents to Respondent No. 3.

16) It appears that Respondent No. 3 submitted Application dated 7 April 2022, copy of which is not on record. However, from recitals of order dated 14 July 2022, it appears that the Application dated 7 April

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2022 was submitted by Respondent No. 3 under provisions of Section 154B-23 of the MCS Act seeking disqualification of Petitioner.

17) The Deputy Registrar acted on Application dated 7 April 2022 and proceeded to pass order dated 14 July 2022 disqualifying Petitioner for a period of 5 years under Section 154B-23 of the MCS Act. As observed above, order dated 14 July 2022 was set aside by the Divisional Joint Registrar and the matter was remanded to the Deputy Registrar. However, on 30 January 2023, the Deputy Registrar once again ordered Petitioner's disqualification for a period of five years. The order dated 30 January 2023 passed by the Deputy Registrar has been confirmed in revision by the Divisional Joint Registrar. It is the orders passed by the Deputy Registrar on 30 January 2023 and by Divisional Joint Registrar on 12 October 2023 which are subject matter to the challenge in the present Petition.

18) Section 154B-8 of the MCS Act creates a right in favour of every member of a society to inspect copy of the Act, Rules and Bye-laws last audited annual balance-sheet, profit and loss account, list of members of committee, register of members, the minutes of general meeting, minutes of committee meetings and those portions of the books records in which his transactions of the society are recorded. Correspondingly, sub-section (2) of Section 154B-8 imposes a duty on the society to furnish to a member, on receipt of request in writing and on payment of prescribed fees, copies of any of the documents enumerated in Sub-section (1). Section 154B-8 of the MCS Act provides thus:

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154B-8. Rights of Members to inspect the documents.—

(1) Every Member of a society shall be entitled to inspect, free of cost, at the society's office during office hours, or any time fixed for the purpose by the society, a copy of the Act, the rule and the bye-laws, the last audited annual balance sheet, the profit and loss account, a list of the members of the Committee, a register of members, the minutes of general meetings, minutes of Committee meetings and those portions of the books and records in which his transactions with the society have been recorded.

(2) A society shall furnish to a member, on request in writing and on payment of such fees at such rate as may be decided by the Registrar, from time to time, the copies of any documents mentioned in the foregoing sub-section within forty-five days from the date of payment of such fees and when the Society is assisted by the Government in the form of share capital, loan and land, the said Society shall furnish such information within thirty days from the date so requested by a member.

19) Under Section 154B-23 of the MCS Act, a person incurs disqualification from being appointed, nominated, elected or co-opted as a member of the committee in the circumstances enumerated therein. One such circumstance, provided under clause (iii) of sub-section (1) of Section 154B-23, is where a person is held responsible under Section 154B-8(2) of the MCS Act. Thus, where a Society fails to furnish copies of the documents as required under Section 154B-8(2), the concerned member of the Committee, being responsible for such breach, incurs disqualification from being appointed, nominated, elected or co-opted as a member of the committee. Section 154B-23 of the MCS Act provides thus:

154B-23. Disqualification of Committee and its Members.

(1) Without prejudice to the other provisions of this Act or the rules made thereunder, in relation to the disqualification of being a Member of the Committee, no person **shall** be eligible to be appointed, nominated, elected, co-opted for being a Member of Committee,

(i) if he is a defaulter of any society, or

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(ii) if he carries on business of letting, subletting and selling of flats in the housing society of which he is a Member, or

(iii) if he has been held responsible under section 79, 88, 154B-8(2) or 154B-27 or for payment of cost of enquiry under section 85, or

(iv) if he has incurred any disqualification under this Act or the rules made thereunder, or

(v) if he incurs any of the disqualification similar to that mentioned in the provisions of clause (vii), (viii) or (ix) of clause (f) of sub-section (1) of section 73CA.

(2) A Member, who has incurred any disqualification under sub-section (1), shall cease to be a Member of Committee and his seat shall thereupon be deemed to be vacant.

(3) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification under clause (ii), (iii), (iv) or (v) of sub-section (1), shall not be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee for five years from the date on which he or she has so ceased to be a Member of the Committee.

(4) A Member of a Committee who has ceased to be a Member thereof, on account of having incurred disqualification other than disqualifications, referred to in sub-section (3), shall, unless otherwise specifically provided in this Act, be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee as soon as such disqualification ceases to exist.

(emphasis and underling added)

20) In the present case, disqualification of Petitioner is ordered on account of failure on the part of the society to furnish copies of documents under sub-section (2) of Section 154B-8 of the MCS Act. As observed above there is no dispute to the position that the Petitioner, on behalf of the society, flatly refused to supply copies of demanded documents to Respondent No.3. Therefore, non-supply of documents under Section 154B-8(2) of the MCS Act is not a disputed fact. The issue for consideration is whether in every case where failure to supply documents under Section 154B-8(2) of the MCS Act is established,

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disqualification of member of committee is mandatory or whether Registrar has the necessary discretion to pardon such lapse and reject the prayer for disqualification? The plain reading of provisions of Section 154B-23 of the MCS Act would indicate that the same essentially deals with the aspect of eligibility of a person to be appointed, nominated, elected, co-opted for being a member of the managing committee. Thus, a person who is held responsible under Section 154B-8 (2) of the Act incurs disqualification under Section 154B-23(1). Under sub-section (2) of Section 154B-23, such person who incurs disqualification, ceases to be the member of the committee and the position held by him/her is deemed to be vacated. Such disqualified member also incurs automatic disqualification for being re-elected, re-co-opted or re-nominated as a member of the committee for five years.

21) The true purport of provisions of Section 154B-23 of the MCS Act is to declare the three consequences of (i) incurring of disqualification, (ii) vacation of position and (iii) further disqualification for 5 years if any of the four enumerated eventualities occur. Plain reading of the provision shows that the same is declaratory in nature and does not prescribe any elaborate procedure for adjudication by the Registrar in respect of the disqualification incurred by the committee member. Though the word 'shall' is used in sub-section (1) of Section 154B-23, the same applies in relation to acquiring of ineligibility and the word 'shall' is not meant to be giving any mandate to the Registrar while making an adjudication about occurrence of any of the four enumerated circumstances. As a matter of fact, Section 154B-23 does not by itself contemplate any adjudication by the Registrar. However, since the

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member accused of breaching the provisions of Section 154B-8(2) of the Act may dispute incurring of disqualification and can refuse to vacate the position, the Registrar needs to be approached for seeking a declaration of disqualification under Section 154B-23. While issuing that declaration, the Registrar needs to undertake adjudication of rival claims, and this is how the adjudicatory process is involved even though Section 154B-23, by itself, does not contemplate any such adjudicatory process.

22) Since adjudication needs to be done by the Registrar while issuing declaration of incurring of disqualification, the adjudication essentially has to be about existence/occurrence of any of the four enumerated circumstances in the facts of a given case. This is where some leeway and flexibility need to be legitimately conceded in favour of the Registrar while making the adjudication. He cannot be mechanical and needs to apply his mind to the factual circumstances to decide whether issuance of declaration of disqualification is warranted in the facts and circumstances of the case. Provisions of Sections 154B-8 and 154B-23 are not intended at throwing out the managing committee members every time there is a technical failure. Both provisions form part of Chapter XIII-B, which related only to the housing societies. A housing society is formed with the primary objective of managing the affairs of the building by the residents themselves in a democratic manner. It is residents who volunteer to manage the affairs of the society at no renumeration for the efforts. On occupying a position, a sense of power and importance may be generated, but the managing committee members essentially volunteer to look after the affairs of the building.

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Since self-governance is the concept, it needs to be ensured that the society is permitted to function in a democratic manner without bringing in any external authorities like administrators, etc. Therefore, while undertaking the process of adjudication under Section 154B-23, the Registrar needs to exercise its discretion judiciously and prudently and disqualification can be declared only when a deliberate refusal to provide the documents enumerated in Section 154B-8 has occurred.

23) Circumstantial flexibility is not eschewed in the statutory scheme of Section 154B-8 and Section 154B-23 of the MCS Act. Therefore, the word 'shall' appearing in Section 154B-23 essentially applies to the consequences of disqualification, meaning thereby that once occurrence of one of the four eventualities is established, the consequence of disqualification is automatic and mandatory. However, this does not mean that the Registrar has no jurisdiction or discretion to consider facts of the case for deciding whether the alleged eventuality has indeed occurred or not. In relation to incurring of disqualification for the responsibility under Section 154B-8(2), the Registrar can consider the facts and circumstances of the case and then take a judicious decision as to whether the member concerned can be held responsible under that Section.

24) Since the Registrar exercises adjudicatory powers under Section 154B-23 of the MCS Act, the expression '*if he has been held responsible*' used in clause (iii) of sub-section (1) thereof would mean that the Registrar will adjudicate whether the person whose disqualification is sought is 'responsible' for failing to provide the

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documents under Section 154B-8(2) to an extent that his disqualification must be declared. While adjudicating this 'responsibility' he can take into consideration facts and circumstances of the case, rather than acting mechanically and in a post office like manner and then decide whether the person accused of breaching provisions of Section 154B-8(2) needs to be disqualified or not. Fact specific adjudication is the key and not a mere mechanical acting.

25) In ***Shahid Tamboli*** (supra) a coordinate bench of this Court has considered the interplay between provisions of Section 154B-8(2) and Section 154B-23 of the MCS Act. This Court has considered the question as to whether the use of the word 'shall' in Section 154B-23 of the MCS Act makes it mandatory for the Registrar to order disqualification in every case where a lapse in furnishing documents under Section 154B-8(2) of the Act is established. This Court has held that the mere use of the word 'shall' in Section 154B-23 of the Act is not, by itself, decisive of the mandatory nature of the provision. This Court has held in paragraph 21 as under:-

> **21)** It is well recognized that the mere use of the word 'shall' is not of decisive significance to cloth mandatory character to a provision. To decipher the character of a provision, both text and context of the relevant provision deserve to be noted. The Court has to ascertain the legislative object and the consequences which the legislature has prescribed in the event of breach. The principles which govern the determination of mandatory or directory character of a provision are well-recognized.

26) In ***Shahid Tamboli*** this Court also consider the issue as to whether absence of expression "without any reasonable or justifiable

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cause" appearing in Section 154B-8 or 154B-23 made disqualification automatic and held in paragraphs 28 and 31 of the judgment as under:-

> **28)** The aspect of imperativeness of the time limit cannot be determined de hors the context. In a deserving case, where the disqualification is ordered for failure to observe the time limit of 45 days strictly, the mandatory character of the time limit may be justifiably delved into. Moreover, the fact that immediately after the expiry of the period stipulated for the supply of documents under Section 154B-8(2), disqualification is not automatic, cannot be lost sight of. The disqualification is incurred only when the Registrar fastens liability on the member of the committee for default in supply of the copies under Section 154B-8 (2) of the Act, 1960. Inevitably, the inquiry is warranted and required to be held (as in the instant case). That provides an opportunity to the defaulting society and Committee members to demonstrate that the default was neither intentional nor there was lack of bona fide. Undoubtedly, the expression "without any reasonable or justifiable cause" does not find place either in Sections 154B-8 or 154B-23. Yet, while fastening the responsibility for the default so as to entail the consequence of disqualification, that aspect ought to enter determination by the Registrar.
>
> **31)** Even where a provision is couched in a mandatory form if it could be shown that a party has done all that, which was within its powers, noncompliance may not result in an irretrievable hardship as the party has, in essence, ensured substantial compliance. In such an eventuality, where the court is satisfied that a party has made a substantial compliance in furtherance of the legislative object, the Court may relieve a party of the hardship which a minor or technical infraction would otherwise entail.

27) The issue of interplay between provisions of Section 154B-8 and 154B-23 again arose for consideration before coordinate bench of this Court in ***Nair Pushpa Sureshkumar*** (supra) in which this Court held in paragraph 26 of the judgment as under:-

> 26. For deciding how long a person should be disqualified under Section 154B-23, the Registrar must follow clear and fair standards. The law gives the power, but the use of that power must be guided by common sense and the need to protect the Society. The following points are important.

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(i) Nature of the breach
The Registrar must see what exactly the committee member has done wrong. If the wrong involves hiding documents, blocking transparency or ignoring lawful directions, it becomes more serious. When a member's conduct directly affects another member's right to get documents under Section 154B-8, stricter action becomes necessary.

(ii) Length of the misconduct
The Registrar must see how long the misconduct continued. A small mistake corrected quickly is one thing. A delay of several months or refusal even after reminders is quite different and more serious.

(iii) Repeated requests and warnings
If a member keeps asking for documents in writing and the Society does nothing, it shows that the committee knowingly ignored its duty. If the Society still fails to act even after the Registrar passes orders, it strengthens the case for a longer disqualification.

(iv) Purpose or effect of the non-compliance
The Registrar must see whether the refusal to give documents might have been to hide wrongdoing, financial loss or misuse of power. If the misconduct affects the honest functioning of the Society, stronger action is justified.

(v) Past behaviour of the committee member
If the member has earlier been found responsible for wrongdoing under Sections 79, 88, 154B-8(2) or 154B-27, or if a recovery certificate has already been issued, it shows a pattern of poor management. Repeat violations call for stricter punishment.

(vi) Harm caused to the Society
The Registrar must consider whether the misconduct caused financial loss, confusion in the Society's working or loss of trust among members. Greater harm demands a disqualification that fits the seriousness of the situation.

(vii) Response of the committee member
The Registrar should see whether the member offered a timely explanation or took steps to correct the mistake. A member who ignores the law for months and later gives technical excuses cannot ask for leniency

(ix) Cooperation during proceedings
If the member did not produce documents during inquiry or did not assist the process, it shows that he is not fit to continue on the Committee. Lack of cooperation may justify the maximum disqualification.

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> (x) Need to protect the Society
> The main goal is to protect the Society and its members from further harm. If the Registrar finds that allowing such a member to continue would put the Society at risk, a full fiveyear disqualification may be required.
>
> (xi) Proportionality
> Although the law provides for a five-year disqualification, the Registrar must decide a period that matches the actual misconduct. Small and unintentional mistakes may call for a shorter period. Serious and deliberate wrongdoing may justify the full term

28) This Court further held in ***Nair Pushpa Sureshkumar*** that it is not mandatory to disqualify member of managing committee for five years and also that disqualifying the entire managing committee for breach of provisions of Section 154B-8(2) is not warranted.

29) In ***Shashikant M. Ramane***, this Court has held that substantial compliance with provisions of Section 154B-8(2) can avoid disqualification. In ***Shashikant M. Ramane***, this Court held in paragraphs- 23, 24 and 25 of the judgment as under:-

> **23.** There is thus admitted failure on the part of the Petitioners to comply with the provisions of Section 154B-8(2) of the MCS Act within the stipulated time limit. Respondent No.4 had appended cheques of Rs.200/- with both requisitions submitted on 5th and 8th October 2023. Therefore, it was incumbent upon Petitioners to supply demanded documents within a period of 45 days from 5th and 8th October 2023. The Petitioners, however, deliberately avoided to supply the demanded documents and whiled away time. They made the Deputy Registrar write two letters dated 20 November 2023 and 19 December 2023. The refusal to supply demanded documents made the Deputy Registrar issue directions under Section 154B-27(1) on 6 February 2024 and pass an order under Section 154B-27(2) on 15 March 2024. It is only after the Deputy Registrar wrote four times to the society that finally disqualification proceedings were initiated against the Petitioners. This Court has repeatedly highlighted the importance of making available the records of the society to the members. In ***Shahid Tamboli*** (supra),

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this Court has underscored the importance of provisions of S.154(B-8)(ii). It has held in paras-27, 28 and 31 as under:

xxx

24. Though a substantial compliance with the provisions of Section 154B-8(2) can avoid disqualification, again in the present case, I am unable to record a finding that there is even substantial compliance with the provisions of Section 154B-8(2) on the part of the Petitioners. The case does not involve insignificant delay in supply of the demanded documents. On the other hand, the case involves deliberate refusal to furnish the demanded documents. The Petitioners have made the Deputy Registrar to repeatedly intervene and issue letters to the society. The society could have simply handed over copies of the demanded documents to Respondent No.4 rather than supplying the same belatedly to the office of the Deputy Registrar on 18 January 2024 and 13 March 2024. There is no evidence on record to indicate that the documents were earlier sought to be furnished to Respondent No.4 or that he refused to accept the same. This Court has held in ***Mahesh Madhukar Bhartiya vs. Divisional Joint Registrar, Co-operative Societies, Mumbai and Ors.***[6] that CD containing video recording of AGM/SGM is not one of the enumerated documents under Section 154B-8(1) and therefore non-supply of the same cannot incur disqualification under Section 154B-23(1)(iii). However, in the present case, in addition to video recording, Respondent No.4 had also demanded minutes of 13 Management Committee meetings. Non-supply of those minutes definitely amounts to failure within the meaning of Section 154B-8(2) of the Act. In my view therefore, declaration of incurring of disqualification of the Petitioners made by the Deputy Registrar as confirmed by the Joint Registrar and the Hon'ble Minister appears to be in order.

25. Ordinarily, this Court would have been loath in confirming the disqualification order in respect of a cooperative housing society, if the case was to involve some delay in furnishing the demanded documents. The objective behind Section 154B-8 is to ensure that the affairs of the society are conducted in transparent manner. Merely because the society involved is a cooperative housing society, the same does not mean that the same can governed without any regard to the statutory provisions. It is unfortunate that the Petitioners had reservation about sharing minutes of managing committee to their own committee member. Respondent No. 4 had demanded minutes of the managing committee meetings complaining that he had not received any notice in respect of most of the meetings. It appears that some vital decisions

[6] Writ Petition No. 16171 of 2025 decided on 25 June 2026

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have been taken in the meetings by the managing committee, which is clear from the following averments in the Reply:

> (A) I have received Notices for monthly meetings of the Management Committee of the Respondent No.3 society through WhatsApp. In none of the Notice the agenda of the meeting is mentioned, in violation of Bye-law No. 132 of the bye-laws of the society. Every notice simply says,"All important subjects will be discussed". Hereto annexed and marked as **EXHIBIT R 14- COLLY** are the Screen Shots of Notices for monthly meetings of the Management Committee of the Respondent No. 3 society through Whats App.
>
> (B) The present Management Committee, in its first monthly meeting held on 8th September 2022 has enhanced the limit for cash on hand, which the secretary may retain in his personal custody, at the close of the day, for petty expenses, from Rs.5000/- to 10000/-, in violation of Bye-law No. 144 of the bye-laws of the society. Hereto annexed and marked as EXHIBIT R-15 is the copy of the minutes of the meeting of the Management Committee, dated the 08/09/2022. The Present Management Committee never got the same approved in the Annual General Meeting, may be for concealing the same from the members of the Respondent No. 3 society. Even I became aware of the same only after I received the Minutes of the meetings of the Management Committee on 15th October 2024. In the Audit Reports for the years 2022-2023, 2023-2024 and 2024-2025, the Auditor has pointed out this violation and advised the Management Committee of the Respondent No. 3 society to bring down limit of cash in hand within the statutory limit. However, the Management Committee has not paid any heed to the Reports of the Auditor. Hereto annexed and marked as **EXHIBIT R-16-COLLY** are the copies of 3 Letters of Auditor of the Respondent No 3 society together with the violations of the provisions of the Act, Rules and Bye-Laws of the Respondent No.3 society, pointed by him in Audit Reports for the years 2022-2023, 2023-2024 and 2024-2025.

Considering the above position, it is difficult to conclude that Respondent No. 4 had demanded documents only for creating a ground for disqualification of the Petitioners.

30) Thus, disqualification of a member of managing committee is not automatic once it is found that there is breach of provisions of Section 154B-8(2) of the MCS Act. The Registrar cannot act mechanically

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while deciding the issue of disqualification and is required to take into consideration the nature of the breach, the duration and extent of the misconduct, as well as the purpose and the effect of the non-compliance, amongst other relevant factors. The Registrar is required to consider the reasons for which the documents were denied to a member. If it is found that there was a deliberate act on the part of a Managing Committee member in refusing to provide inspection or furnish copies of the demanded documents, with the object of concealing any wrongdoing, financial irregularity, loss or misuse of power, the Registrar must direct disqualification of such managing committee member. However, if there is any genuine difficulty in furnishing the documents, the Registrar is not precluded from taking into consideration the justification put forth by the concerned managing committee member while opposing the proposed disqualification. In short, the Registrar cannot act mechanically and proceed to disqualify a member of the managing committee merely because the documents demanded under Section 154B-8(2) of the MCS Act have not been furnished.

31) Having considered the statutory scheme of provisions of Sections 154B-8 and 154B-23 of the MCS Act, I now proceed to consider whether disqualification of Petitioner and that too for a period of five years was warranted. In the present case, Petitioner refused to supply copies of demanded documents to Respondent No. 3 by taking an emphatic stand that he is not the member of the society. Mr. Bayas has sought to highlight the position that both Petitioner and Respondent No. 3 secured membership of the society through common order dated 23 March 2015 passed by the Deputy Registrar. It appears that society had

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challenged order dated 23 March 2015 before Divisional Joint Registrar and the revision was dismissed by order dated 29 July 2019. Before Divisional Joint Registrar also Petitioner and Respondent No. 3 jointly defended grant of membership. It is therefore, sought to be suggested by Mr. Bayas that Petitioner deliberately took a false defence of Respondent No. 3 not being a member despite being fully aware of the fact that he was granted membership alongwith Petitioner. The argument appears to be attractive in the fresh blush, but is inconvincible on a deeper scrutiny. The reasons which compelled the Petitioner to raise the defence that Respondent No. 3 was not a member of the Society needs to be duly appreciated. True it is that Petitioner as well as Respondent No. 3 were being denied membership of the society and they were required to file a common Appeal No. 1286 of 2015 under Section 22 (2) of the MCS before the Deputy Registrar. In that Appeal Respondent No. 3 was Appellant No. 34 whereas Petitioner was Appellant No. 50. The Appeal was allowed by common order dated 23 March 2015 declaring deemed membership in their favor under Section 22(2) of the MCS Act. The order dated 23 March 2015 was upheld in revision by the Divisional Joint Registrar vide order dated 29 July 2019. Thus, as on 29 July 2019 Petitioner was possibly fully aware of the fact that deemed membership was granted in favour of Respondent No. 3. Ordinarily therefore, Petitioner could not have feigned ignorance about grant of membership to Respondent No. 3. However certain subsequent events occurred creating doubts about membership of Respondent No. 3. It would be necessary to consider those events.

32) Since no elections were held for electing managing committee of the society for a considerable period of time, an auditor

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was appointed to inspect the records of the society by order dated 14 December 2015. The auditor submitted his detail report recommending removal of charge of the society from the chief promoter of Ishan Society and for appointment of administrative committee. Accordingly, the Deputy Registrar appointed three-member administrative committee by order dated 5 September 2019, which was confirmed in Appeal by the Divisional Joint Registrar and in revision by the Hon'ble Minister.

33) The administrative committee took steps for holding elections of the society. It appears that Mr. R. S. Bhujbal, who was the earlier Auditor and the Chairman of administrative committee submitted a report dated 21 November 2021 pointing out that there were 52 persons who had failed to pay amount toward lease and that therefore they should not be granted membership of the society. He prepared list of only 143 members which did not include the names of 52 members. The name of Respondent No. 3 was in the 52 excluded persons. The elections were thereafter held on 14 November 2021 on the basis of list of members prepared by the administrative committee. Petitioner and other committee members were elected in that election and the Petitioner was further elected as the Chairman of Ishan Society.

34) Within 14 days of holding of elections on 14 November 2021, Respondent No. 3 sent letter dated 29 November 2021 demanding various documents. At that time the managing committee elected vide election dated 14 November 2021 was yet to have access to the entire records of the society. The Petitioner, in his capacity as chairman of the society, was seized of the report of Mr. Bhujbal as well as of the list of

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members, which did not contain name of Respondent No. 3. Based on that report and the list, Petitioner believed that Respondent No. 3 is not admitted into membership of the society on account of non-payment of any amounts for the concerned plot allotted to him. It is on account of this peculiar situation that Petitioner gave reply dated 17 December 2021 to the Deputy Registrar taking an emphatic stand that since Respondent No. 3 is not a member of the society, he cannot be supplied any of the demanded document.

35) Thus, refusal to supply documents by Petitioner is not deliberate but stems out of a belief created on account of report of the Auditor as well as list of members prepared for elections, which did not include the name of Respondent No. 3. Therefore, though the Petitioner and Respondent No. 3 had secured deemed membership of the society vide orders passed by the Dy. Registrar and Divisional Joint Registrar, the situation was fluid at the time of sending of requisition for documents by the Respondent No. 3. Therefore, it cannot be held that Petitioner had any ill motive in denying the documents to Respondent No. 3. In my view, therefore, the reason why Petitioner did not supply the demanded documents to Respondent No. 3 needs to be borne in mind rather than mechanically ordering his disqualification.

36) Though, Petitioner no longer maintains the position that Respondent No. 3 is not a member of the society, he did believe so on 17 December 2021 when he refused to supply the demanded documents. Petitioner thus genuinely felt that Respondent No.3 is not the member of the society and on this account, he rejected the demand for supply of

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documents. The stand taken by Petitioner is not deliberate as sought to be canvassed by Respondent No.3. Though, both Petitioner and Respondent No.3 secured deemed membership under common orders passed by the Deputy Registrar and Divisional Joint Registrar, the subsequent events, which occurred later did create an impression in the mind of the Petitioner that Respondent No. 3 may not be the member of the society.

37) In the facts of the present case, Petitioner did not have any oblique motive in refusing to supply the demanded documents to Respondent No.3. The refusal on his part was owing to his belief that Respondent No.3 is not a member of the society and this belief got created on account of the list of members prepared by the then auditor/committee of administrators. It is the matter of fact that the demanded documents have been supplied to Respondent No.3 subsequently. In my view therefore, the peculiar facts of the present case need to be appreciated and it is difficult to conclude that Petitioner deliberately did not supply the demanded documents to Respondent No.3. In my view, therefore, the present case fits into the ambit of those rare cases, where mitigating circumstances are required to be taken into consideration for the purpose of deciding the issue as to whether member of the managing committee deserves to be disqualified or not.

38) Mr. Bayas has strenuously relied on the judgment of this Court in ***Shashikant M Ramane*** in support of his contention that this Court has held that deliberate withholding of documents attracts disqualification. According to him the ratio of the judgment squarely

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applies to the facts of the present case. No doubt, the ratio of the judgment centers around the importance of transparency, statutory compliance, and the consequences of withholding cooperative housing society records. Though it is held in ***Shashikant M Ramane*** that substantial compliance with provisions of Section 154B-8 can avoid disqualification, this Court still upheld the order of disqualification after noticing that minutes of the meetings involving taking of vital decisions were deliberately withheld from the member. The facts of that case are entirely distinguishable, and ratio thereof would have no application here.

39) Also, of relevance is the fact that the disqualification was first ordered by the Deputy Registrar on 14 July 2022, the disqualification was for five long years and the same would otherwise come to an end on 14 July 2027. Even if Petitioner is technically held guilty of violation of provisions of Section 154B-8(2) of the MCS Act, still his disqualification for five years is clearly not warranted. Even if the period of disqualification is to be reduced, the same would be over by now. This Court is otherwise not convinced that Petitioner deserves to be disqualified because he took a stand that Respondent No.3 is not a member of the society while not supplying the copies of the documents.

40) As observed above, this Court has stayed the disqualification by order dated 6 March 2025. While admitting the Petition on 7 April 2025, this Court has recorded following *prima-facie* findings in paragraphs 2 to 7 as under:

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2. Prima facie, it appears that the action of disqualification has been initiated against the petitioner owing to the alleged nonsupply of certain documents sought from him. Upon perusal of the material placed on record, it is evident that though the respondent has been able to establish that the members of the society had sought certain documents from the petitioner, in my considered opinion, mere non-furnishing of documents, without there being any further act or omission suggestive of mala fide intent, gross negligence, or breach of fiduciary duty, cannot, by itself, be construed as sufficient ground to invoke the drastic consequence of disqualification of an elected member of the Managing Committee.

3. It is trite law that the right to hold an elected office is a valuable right conferred by statute, and any curtailment thereof must be strictly construed. A disqualification from elected office must be based on clear and cogent material, and that penal consequences should not ensue from mere technical or trivial violations.

4. In the present case, what falls for determination is whether a mere technical violation, i.e., the failure to furnish certain documents, without any accompanying element of deliberate defiance, misfeasance, or breach of trust, would ipso facto attract the stringent consequence of disqualification for a period of five years under the relevant statutory provisions. It must be noted that such disqualification would not only remove the petitioner from his current tenure but would also incapacitate him from contesting elections for the next term, thereby having far-reaching civil consequences.

5. The disqualification provisions must be interpreted strictly, and unless the alleged act falls squarely within the statutory parameters prescribed for disqualification, an elected representative cannot be divested of his office.

6. Moreover, the doctrine of proportionality also mandates that administrative action must not be disproportionate to the gravity of the alleged misconduct. In the facts of the present case, imposing a disqualification for five years, which exceeds the normal tenure of the elected Managing Committee, merely on account of non-supply of documents, without anything more, appears to be grossly disproportionate.

7. Hence, in light of the foregoing discussion, the question that arises for consideration is whether mere failure to furnish documents, without more, would warrant the grave consequence of disqualification for a period of five years under the applicable statutory framework.

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41) Thus, on account of earlier order of remand and the interim orders passed by this Court, though the disqualification was initially ordered on 14 July 2022, the same has not taken effect for the last four long years. Petitioner is democratically elected on the committee and his ouster for failure to supply documents is not warranted when he genuinely believed that Respondent No. 3 may not be a legitimate member of the society capable of demanding copies of documents as a matter of right.

42) The impugned orders dated 12 October 2023 and 30 January 2023 passed by the Divisional Joint Registrar and the Deputy Registrar are indefensible in the facts of the present case. Therefore the disqualification of the Petitioner deserves to be set aside when he is not found guilty of deliberate violation of provisions of Section 154B-8 of the MCS Act.

43) Petition accordingly succeeds. Order dated 12 October 2023 passed by the Divisional Joint Registrar and order dated 30 January 2023 passed by the Deputy Registrar are set aside.

44) Writ Petition is **allowed** in the above terms. Rule is made absolute. There shall be no order as to costs.

45) In view of the disposal of the Petition, nothing would survive in the Interim Application and the same is also **disposed of.**

RENUKA SHANKARSINHA THAKUR

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[SANDEEP V. MARNE, J.]

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