

Neeta Sawant

WP-890 OF 2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 890 OF 2018

Saili Durgadas Acharya

...Petitioner**V/s.**Nandan Co-operative Housing Society
Limited and ors.**...Respondents**

Mr. Aseem Naphade with Ms. Vilasini Subramanian and Mr. Aarif Dhariwala i.b. A.P. Singh & Co., for the Petitioner.

Mr. Rajiv Singh with Mr. Sameer Chitnis, Mrs. Manjiri Chitnis, Ms. Madhura Kulkarni and Mr. Omkar A. Dandekar i.b. M/s. Chitnis & Co., for Respondent No.1.

Mr. Shishir Joshi i/b. Mr. Prasshant Berri, for Respondent No.2A.

Mr. N.C. Walimbe, Additional Government Pleader with Mr. P.V. Nelson-Rajan, AGP for Respondent-State.

CORAM: SANDEEP V. MARNE, J.

Reserved On: 08 July 2026

Pronounced On: 17 July 2026.

Judgment

1) Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final disposal.

2) By this Petition, the Petitioner has challenged the order dated 16 May 2016 passed by the Deputy Registrar, Co-operative Societies, G/N. Ward, Mumbai issuing directives to the Society under the provisions of Section 79(2) of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). The directives included cancellation of membership and share certificate issued to the Petitioner, restoration of water supply to the flat and return of car parking space to Respondent No.2.

3) The dispute between the parties relate to Flat No. A/4, admeasuring 650 sq. ft carpet area situated in the building of Nandan Co-operative Housing Society Limited (Respondent No.1). The building is located at Veer Savarkar Marg, Shivaji Park, Mumbai. Mr. Balmukund Acharya (**Balmukund**) claimed ownership in respect of Flat No. A/4 and the society had issued the share certificate in the sole name of Balmukund Acharya. It appears that Balmukund had permitted his brother Dattakumar Parshuram Acharya (**Dattakumar**) to reside in the flat. On the strength of occupation of flat by him, Dattakumar applied to the society to add his name as joint/nominal member in the share certificate. Accordingly, the society added the name of Dattakumar in the Share Certificate along with Balmukund on 18 October 1981. Balmukund protested addition of name of Dattakumar in the membership register and in the share certificate vide letter dated 3 July 1996.

4) In April 1997, Balmukund filed L.E. Suit No. 55/63 of 1997 before the Small Causes Court at Mumbai against Dattakumar seeking his eviction branding him as a gratuitous licensee. One of the prayers in

the Suit was for deletion of name of Dattakumar from the records as co-members/nominal member in respect of the flat. The plaint in the suit was returned by the Small Causes Court for want of jurisdiction vide order dated 15 October 1997. Balmukund filed Appeal No. 14 of 1998 before the Appellate Bench of the Small Causes Court which was allowed by order dated 22 July 1998 and the Suit was restored. Dattakumar filed Writ Petition No. 5764 of 1998 challenging the order of the Appellate Court. During pendency of Writ Petition, Balmukund agreed to give up prayer clause (d) in the suit relating to deletion of name of Dattakumar from membership register and the Writ Petition was accordingly disposed of maintaining the order of the Appellate Court. By order dated 27 January 2005, the Small Causes Court once again returned the Plaint on the ground of lack of jurisdiction. Durgadas Balmukund Acharya (*son of Balmukund*) filed Writ Petition No. 1040 of 2009 challenging the order of the Small Causes Court dated 27 January 2005 which was dismissed by this Court vide order dated 4 March 2009.

5) On 28 June 2011, Balmukund passed away. On 3 August 2012, his son Durgadas also passed away. Petitioner is the daughter of Durgadas and granddaughter of Balmukund. She filed application dated 23 August 2012 to the Society for addition of her name in the society records for issuance of share certificate. On 21 October 2012, the Society transferred membership in favour of Petitioner and issued a duplicate Share Certificate in her name. Dattakumar wrote to the society on 25 February 2013 referring to joint membership as per family arrangement. On 6 February 2013, Petitioner called upon the Society to cancel car

parking allotted to Dattakumar. By letter dated 9 February 2013, the Society cancelled the car parking of Dattakumar.

6) In the above background, Dattakumar filed application before the Dy. Registrar seeking cancellation of duplicate Share Certificate issued in the name of the Petitioner and sought restoration of water connection/supply and restoration of car parking. By order dated 16 May 2016, the Deputy Registrar has issued directives to the Society under sub-section (2) of Section 79 of the MCS Act directing it to cancel membership and Share Certificate issued to the Petitioner, to restore water supply to Flat No. A/4 and also to return car parking to Dattakumar.

7) Respondent No.1-Society challenged Order dated 16 May 2016 of the Deputy Registrar by filing Appeal No. 340 of 2016 before the Divisional Joint Registrar. Petitioner filed intervention application in Society's Appeal No. 340 of 2016, which was allowed and the Petitioner was impleaded as party to the Appeal. Petitioner also filed Dispute-III/119 of 2016 before the Co-operative Court *inter alia* seeking injunction against Dattakumar.

8) In the above background, Petitioner has filed the present Petition challenging the order dated 16 May 2016 passed by the Deputy Registrar. During pendency of the petition, Dispute-III/119 of 2016 was withdrawn by the Petitioner on 12 March 2020. Dattakumar passed away on 24 February 2021 and accordingly his daughter, Nandita Acharya is brought on record. Society's Appeal No. 340 of 2016 filed before the

Divisional Joint Registrar was also dismissed for default on 1 August 2022. In the present petition, this Court has passed interim order dated 27 April 2026 staying the order dated 16 May 2016. Respondent No.1-Society has filed its affidavit-in-reply. Similarly, separate affidavit in reply is filed by Respondent No.2/Nandita. Additionally, the learned counsel for the Petitioner and Respondent No.2 have tendered their respective compilation of documents.

9) Mr. Naphade, the learned counsel appearing for the Petitioner submits that the impugned order dated 16 May 2016 passed by the Deputy Registrar is wholly without jurisdiction. Referring to the provisions of Section 79 of the MCS Act, he submits that the Registrar can issue directions to the Society only towards compliance with the orders already passed by the Registrar. That in the present case, no authority has passed an order for cancellation of membership or Share Certificate of the Petitioner. That under the guise of issuance of directives under Section 79(2), the Deputy Registrar has virtually exercised adjudicatory powers and has decided title dispute between the Petitioner and Respondent No.2 *qua* the flat. That therefore the order of the Deputy Registrar is wholly without jurisdiction and the same is liable to be set aside. In support, he relies on judgment of this Court in **Sadashiv Nagappa Kadam Versus. State of Maharashtra and others.**¹ He submits that since the order is without jurisdiction, the Petitioner is justified in directly approaching this Court instead of filing an appeal before the Divisional Joint Registrar.

¹ Writ Petition No. 2595 of 2026 decided on 4 May 2026.

10) Mr. Naphade further submits that the flat is purchased by Balmukund through his own funds and his brother Dattakumar was merely permitted to occupy the flat as a gratuitous licensee. That Dattakumar had no semblance of title in the flat and had unauthorizedly got his name added in the records of the Society as a joint/nominal member. That deletion of prayer from the suit filed before the Small Causes Court does not mean that Balmukund had given up his claim of being a sole member in respect of the flat. That in any case, mere deletion of that prayer does not mean that the Deputy Registrar could have exercised powers under Section 79(2) of the MCS Act for directing deletion of name of the Petitioner from the Society's membership. That mere intervention in Society's Appeal does not mean that Petitioner does not have right to challenge illegal order of Deputy Registrar independently. That the dispute was filed only for seeking injunction and withdrawal of the same does not mean that the Petitioner cannot maintain challenge to the order dated 16 May 2016. That Petitioner has disclosed all the relevant information and has not suppressed the same. He accordingly prays for setting aside the impugned order dated 16 May 2016.

11) Mr. Joshi, the learned counsel appearing for Respondent No.2 opposes the petition submitting that Petitioner has grossly suppressed the events relating to filing of Intervention Application in Society's Appeal, as well as, filing of Dispute before the Co-operative Court. That Petitioner cannot exercise parallel remedies in respect of the same cause of action. That since Petitioner has already exercised the remedies of becoming party to the Society's Appeal and of filing her

independent Dispute before the Co-operative Court, the present petition filed by her for seeking same reliefs is not maintainable. Without prejudice, he raises the objection of non-entertainability of the petition on account of existence of alternate remedy of filing Appeal under Section 152 of the MCS Act.

12) Mr. Joshi further submits that Dattakumar has already been in possession of the flat right since beginning. That there was a family arrangement between the two brothers under which the share certificate was jointly secured in the names of Balmukund and Dattakumar. That the joint share certificate continued right since 18 October 1981. That the Petitioner has unauthorizedly got her name included in the share certificate by deleting the name of Dattakumar. That Balmukund had given up the claim for exclusive membership of the Society by giving up the prayer for deletion of name of Dattakumar from society's membership. That the Deputy Registrar has rightly taken note of this aspect and has correctly issued directives to the Society for cancellation of name of the Petitioner from the society records and the share certificate. That such cancellation would restore the original share certificate standing in the joint names of Balmukund and Dattakumar. He submits that the Deputy Registrar has rightly exercised jurisdiction under Section 79(2) in the present case. That the Society had unauthorisedly stopped water supply and had cancelled car parking of Dattakumar. That while issuing directives for restoration of water supply and return of car parking, the Deputy Registrar had also taken note of the claim being given up for Balmukund for the purpose of ordering cancellation of name of the Petitioner from the share certificate. That

Petitioner has already exhausted all the remedies for claiming title and possession in the flat and that therefore the impugned order restoring the original position does not warrant any interference in exercise of extraordinary jurisdiction by this Court. He prays for dismissal of the petition.

13) Mr. Singh, the learned counsel appearing for Respondent No.1-Society supports the petition and submits that the impugned order is wholly unsustainable. He submits that on 31 August 2008 itself, a Resolution was passed for cancellation of associate membership of Dattakumar. That Dattakumar never challenged the said Resolution which has attained finality. That therefore even if the impugned order dated 16 May 2016 is implemented, the same would not enure to the benefit of Respondent No.2 whose name from the share certificate has long since been removed. He therefore prays for setting aside the impugned order.

14) I have considered the submissions canvassed by the learned counsels appearing for the parties. I have gone through the findings recorded by the Dy. Registrar in the impugned order. I have perused the documents filed alongwith the petition and the compilation of documents.

15) The first issue that needs to be considered is whether the Deputy Registrar had jurisdiction to issue directives vide order dated 16 May 2016 under Section 79(2) of the MCS Act. By order dated 16 May 2016, the Deputy Registrar has issued following directives to the Society:

निर्देश :-

मी, योगेश रं. देसाई, उपनिबंधक, सहकारी संस्था, जी-एन विभाग, मुंबई, महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ७९ (२) नुसार मला प्राप्त झालेल्या अधिकारांचा वापर करून, नंदन को-ऑप. हौसिंग सो. लि., २२४, वीर सावरकर मार्ग, दादर, मुंबई- ४०० ०१६, या संस्थेस खालील प्रमाणे निर्देश देण्यात येत आहे.

१ श्रीमती. सायली आचार्य यांना संस्थेने दिलेले सभासदत्व व भागदाखला रद्द करण्यात यावा.

२ श्री. डी.पी. आचार्य यांचा सदनिका क्र.ओ/४ चा पाणीपुरवठा पुर्ववत करावा.

३. श्री. डी. पी. आचार्य यांचे रद्द केलेले पार्किंग पुर्ववत परत देण्यात यावे.

सदरच्या निर्देशाचे पालन या आदेशाच्या दिनांकापासुन १५ दिवसाच्या आत करण्यात येवुन त्याचा अनुपालन अहवाल त्यापुढे ७ दिवसाच्या आत या कार्यालयास सादर करावा.

सदर निर्देश आज दि.१६/०५/२०१६ रोजी माझ्या सही व शिक्क्यानिशी देण्यात येत आहे.

16) The Order dated 16 May 2016 is passed in purported exercise of powers under Section 79(2) of the MCS Act. The Deputy Registrar has recorded following broad reasons for issuing directives by the order dated 16 May 2016:

- (i) Office bearers of the Society had unnecessarily troubled Dattakumar by discontinuing the water supply and by cancelling the car parking.
- (ii) The report of Shri. Dinesh V. Lambole, Co-operative Officer after conduct of site visit indicated that there was smooth water supply to the other parts of the building except the first floor where Dattakumar was residing.

- (iii) Balmukund deleted prayer clause (d) for removal of name of Dattakumar from Society's record from L.E. Suit No. 55/63 of 1997 as per the order passed by this Court on 27 January 1999 in Writ Petition No. 5764 of 1998. That therefore joint membership/nominal membership of Dattakumar has crystallised.
- (iv) Society's Chairman avoided to remain present before the Deputy Registrar and committed contempt of directives issued by his office.
- (v) If there is any title dispute, the same needs to be resolved by the competent Court and till that time, Dattakumar would continue to remain as a joint member of the society.

17) On above broad submissions, the Deputy Registrar proceeded to issue directions under Section 79(2) of the MCS Act by order dated 16 May 2016. It would therefore be necessary to consider the provisions of Section 79 of the MCS which deals with Society's obligation to file returns and statements and Registrar's power to enforce performance of such obligations. Section 79 of the MCS Act provides thus:

79. Society's obligation to file returns and statements and Registrar's power to enforce performance of such obligations.

(1) The Registrar may direct any society or class of societies, to keep proper books of accounts in such form, including electronic or any other form, as may be prescribed with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of

goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time ; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

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(2) Where any society is required to take any action including filing of returns under this Act, the rules or the bye-laws, or to comply with an order made under the foregoing sub-sections and such action is not taken—

(a) within the time provided in this Act, the rules or the bye-laws, or the order, as the case may, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing, the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society ; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the bye-laws, or the order made under sub-section (1), and, after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action, and to pay to the assets of the society such sum not exceeding 3 [one hundred rupees] as the Registrar may think fit for each day until the Registrar's directions are carried out.

(4) The Registrar or the authorised person on his behalf shall scrutinise the returns and information so received and take further necessary action, if required.

18) Thus, under sub-section (2) of Section 79 of the MCS Act, where any society is required to take any action under the Act, Rules or Bye-laws or to comply with the order made under Section (1), (1A) and 1-(1A), the Registrar can himself take such action at the expense of the Society. Section 79(2) is thus in two parts viz. (i) failure to take action

required under the Act, Rules or Byelaws and (ii) failure to comply with the Order made under forgoing sub-sections. It cannot be contended that cancellation of name of Petitioner from society's membership register is an act which is required to be performed by the society under the Act, Rules or Bye-laws. The MCS Act does not envisage the society to resolve the title disputes. To exercise jurisdiction based on the second part of Section 79(2), existence of some order passed by the Registrar under the Act and non-compliance with the same becomes a jurisdictional fact.

19) So far as the direction for removal of Petitioner's name from Society's register is concerned, admittedly there is no order passed by the Registrar directing such removal. The same is otherwise not a duty of the society under the Act, Rules or the Byelaws. Taking action for restoration of water supply or return of parking may be covered by provisions of Section 79(2). Thus, what can be done by the Registrar under Section 79 of the MCS Act is giving direction to do an act which the society is bound to perform as per the Act, Rules and Bye-laws or as per the order passed by the Registrar. Where performance of any act requires passing of an order by the Registrar, the Deputy Registrar cannot exercise power under Section 79 and he cannot directly issue directives to the Society for performance of such act.

20) Power conferred under Section 79(2) of the MCS Act merely supervisory in nature where the Registrar can ensure that the society acts in accordance with the provisions of the Act, Rules and the Byelaws. It cannot be confused with the adjudicatory power under which the

Registrar can decide the disputes relating to the title or possession of a flat/unit in society's building.

21) In the present case, there is a serious dispute of title between the Petitioner and Respondent No.2. From the narration of facts, it is clear that the dispute is going on since 1981 when Dattakumar got his name included in the share certificate. The share certificate was initially issued in the sole name of Balmukund on 1 March 1978. By entry effected on 18 October 1981, name of Dattakumar was inserted as a joint/nominal member. Balmukund objected to insertion of name of Dattakumar. He has filed suit in the Small Causes Court both for eviction of Dattakumar as well as for removal of his name from the share certificate. He later gave up that prayer since Small Causes Court obviously does not have jurisdiction to direct deletion of name from share certificate and Co-operative Court alone can issue such direction. Therefore, Balmukund withdrew his prayer for deletion of name of Dattakumar from share certificate with a view to ensure that his suit for eviction of Dattakumar as gratuitous licensee is decided by the Small Causes Court. However on account of confusion prevailing at that time about jurisdiction of Small Causes Court to decide suit for eviction of a gratuitous licensee, it appears that Balmukund's suit came to be dismissed for want of jurisdiction. Be that as it may, it is not necessary to delve deeper into the issue of title. Suffice it to observe that there are serious title disputes between the parties in relation to the flat.

22) In the light of existence of serious title disputes between the parties, the Deputy Registrar could not have ventured into such title

dispute for the purpose of issuance of directions for removal of the name of the Petitioner from the share certificate. While the Deputy Registrar has acknowledged existence of title dispute, he has still exceeded his jurisdiction in issuing directions for removal of the name of the Petitioner from the share certificate. In my view, therefore the impugned order dated 16 May 2016 is wholly without jurisdiction and the same is liable to be set aside.

23) The scope of powers of the Registrar under Section 79 of the MCS Act is dealt with by the Single Judge of this Court in ***Sadashiv Nagappa Kadam*** in which it is held in para-6 as under:

6. Having given hearing to the learned counsel appearing for both sides, and after careful looking into the record placed before this Court, it appears that the controversy goes to the root of rights in immovable property. The dispute concerns entitlement, ownership, and consequential rights flowing from such ownership in respect of the flat. The Registrar, while acting under Section 79 or Section 154B-27 of the Maharashtra Cooperative Societies Act, 1960, is conferred only with limited and supervisory powers, and not with powers of a court to decide questions relating to title or ownership. These provisions, do not empower the Registrar to undertake adjudication of substantive civil rights in immovable property. Therefore, when the Revisional Authority proceeds to grant liberty which indirectly touches upon entitlement and membership arising out of alleged ownership, it in effect enters into an area which is beyond its competence.

24) In the present case, there is no specific direction by the Registrar for removal of name of the Petitioner from society's membership. Therefore, under the guise of exercise of powers under Section 79 of the Act, the Deputy Registrar could not have usurped such powers by entering into the realm of title dispute between the parties. His conclusion that till resolution of title dispute, joint name of

Dattakumar must continue on share certificate is again totally erroneous. The name of the Petitioner was already entered as a sole member in respect of the flat on 21 October 2012. If Dattakumar claimed ownership in respect of the flat or if he was aggrieved by the action of the Society in removal of his name from the society's membership, he ought to have adopted appropriate proceedings in that regard. In fact, if the stand of the Society is to be believed, it appears that it had resolved to remove the name of Dattakumar from membership by passing Resolution on 31 August 2008. It is Society's contention that name of Dattakumar was already removed by the Society from the share certificate. Therefore, it is otherwise questionable as to whether Dattakumar or his granddaughter can be the beneficiary of direction for removal of the name of the Petitioner from Society's membership. The belief of the Deputy Registrar and of Dattakumar that deletion of name of the Petitioner from Society's membership would automatically revive joint membership of Dattakumar appears to be fallacious. Be that as it may. It is not necessary to go deeper into that aspect. Suffice it to observe that the order passed by the Deputy Registrar is wholly without jurisdiction and the same is liable to be set aside.

25) In the light of the impugned order dated 16 May 2016 suffering from serious jurisdictional issue, this Court would not decline to exercise jurisdiction under Article 227 of Constitution Of India on account of availability of alternate remedy of filing appeal under Section 152 of the MCS Act. It is well settled that when an authority passes an order without jurisdiction, the availability of an alternative statutory remedy does not bar a Writ Petition [SEE: **Whirlpool Corporation v.**

Registrar of Trade Marks.^{2]} It is otherwise seen that the Petition is pending before this Court for the last 8 long years. The impugned order has been stayed. Once this Court is convinced that the Deputy Registrar did not have jurisdiction to issue direction No. 1, there is no point in relegating the Petitioner to alternate remedy of revision. I am therefore not inclined to dismiss the petition only on account of availability of alternate remedy.

26) I am not impressed by the contention raised on behalf of Respondent No.2 that the Petitioner had suppressed material facts in the petition. Suppression is sought to be linked to Petitioner's act of filing Intervention Application in Society's Appeal, and as well as her act of filing her independent dispute before the Co-operative Court. Both the aspects are clearly disclosed in paras-21 and 22 of the Petition. The contention of suppression sought to be urged by Mr. Joshi is thus not only factually incorrect but also irresponsible.

27) Mr. Joshi has also contended that Petitioner has exercised parallel remedies and that therefore the petition deserves to be dismissed. It appears that the Society had filed Appeal before the Divisional Joint Registrar challenging the impugned order dated 16 May 2016. In that Appeal, Petitioner filed Intervention Application complaining that any order passed in the appeal would affect her. The Intervention Application was allowed. However, during pendency of the

² AIR 1999 SC 22

Appeal, the Petitioner has filed the present petition directly challenging the order dated 16 May 2016 before this Court. In my view, mere filing of Intervention Application in Society's Appeal could not prevent the Petitioner from filing her independent Appeal before the Divisional Joint Registrar. If she could file her own independent Appeal, she can also prosecute the present Petition before this Court for challenging the order dated 16 May 2016. In my view therefore mere intervention in the Appeal filed by the Society cannot be a reason for dismissal of the present Petition. As observed above, Society's Appeal has been dismissed for non-prosecution possibly on account of limited interest of Society in dispute between the two brothers. Petitioner cannot be rendered remediless merely because she sought intervention in Society's Appeal. She could not have prosecuted Society's Appeal and if the petition is not entertained, the Petitioner would be rendered remediless in respect of the order dated 16 May 2016.

28) So far as filing of Dispute Application No.III/119 of 2016 by the Petitioner before the Co-operative Court is concerned, it is seen that the substantive prayers made therein were as under:

33. The Disputant therefore prays that:

a. That this Hon'ble Court be pleased to declare that Share Certificate of 5 shares dated 21/10/2012 in transfer No. 35 and registration No. 35 with regard to Flat No. A/4, Nandan Cooperative housing society Ltd, Veer Savarkar Marg, Mahim Mumbai 400016 (Exhibit "C") standing in the name of the Disputant is legally binding on the Opponents.

b. That this Hon'ble Court be pleased to pass permanent injunction against the Opponent No.1 and No.2 their agents, servants and/or any one claiming through them not to cancel and/or strikeout/delete the

name of the Disputant from the Share Certificate and membership of Suit flat i.e. Flat No. A/4, Nandan Cooperative housing society Ltd, Veer Savarkar Marg, Mahim Mumbai 400016 and altering and/or amending the same in any manner with regard to the Share Certificate of 5 shares dated 21/10/2012 in transfer No. 35 and registration No. 35 (Exhibit-"C").

c. That this Hon'ble Court be pleased to pass permanent injunction against the Opponent No.2 directing the Opponent No.2 to quit, vacate and hand over the peaceful possession of suit Flat i.e. Flat No. A/4, Nandan Cooperative housing society Ltd, Veer Savarkar Marg, Mahim Mumbai 400016 to the Disputant.

d. That the Opponent No.2 be permanently restrained from impersonating as the sole owner and/or co-owner and/or Member/Associate Member in respect of Suit Flat situated at Flat No. A/4, Nandan cooperative housing society Ltd, Veer Savarkar Marg, Mahim Mumbai 400016.

e. That this Hon'ble Court be pleased to direct the Opponent No.1 to strikeout the name of the Opponent No.2 if found in any documents and/or the records of the Opponent No.1 Society with regard to Suit Flat situated at Fiat No. A/4, Nandan cooperative housing society Ltd, Veer Savarkar Marg, Mahim Mumbai 400016.

f. That the Opponent No.1 and No.2, their agent, servants and/or any person claiming through them be permanently restrained from creating any third party right in respect of the suit flat situated at Flat No. A/4, Nandan cooperative housing society Ltd, Veer Savarkar Marg, Mahim Mumbai 400016.

29) Thus, prayers in the Dispute were for seeking a declaration that the share certificate dated 21 October 2012 was binding on the opponents. Petitioner also sought injunction against the opponents from cancelling her name from the share certificate. The Dispute also sought prayer for possession of flat No. A/4. Thus, no challenge was raised to the Deputy Registrar's Order dated 16 May 2016 in the Dispute. The Dispute was filed on an assumption as if Petitioner's share certificate would continue to remain valid. However, by order dated 16 May 2016,

the Deputy Registrar directed the Society to remove Petitioner's name. Therefore, it is necessary for the Petitioner to challenge order dated 16 May 2016 and in absence of such challenge, it was highly questionable as to whether the other prayers in the Dispute could have been granted or not. Petitioner thus challenged order dated 16 May 2016 by filing the present Petition and has thereafter withdrawn the Dispute on 12 March 2020. In my view, therefore filing of and withdrawal of the Dispute before the Co-operative Court would not come in the way of this Court entertaining the present Petition.

30) Considering the overall conspectus of the case, I am of the view that the impugned directives issued by the Deputy Registrar for cancellation of name of the Petitioner from membership/share certificate is wholly without jurisdiction. The other directives for restoration of water supply to the flat and for return of car parking need not be set aside as they fall within the purview of jurisdiction of the Deputy Registrar under Section 79 of the MCS Act. Since Respondent No.2 occupies the flat, it is otherwise necessary that the water supply is not discontinued and the parking space *qua* the flat is also enjoyed by Respondent No.2. However the direction for removal of name of Petitioner from membership register and from the share certificate is wholly without jurisdiction and the same is liable to be set aside. At the same time, it needs to be clarified that the Order dated 16 May 2016 is being partly set aside essentially on account of absence of jurisdiction. Setting aside of that order would not come in the way of Respondent No. 2A in pursuing available remedies for securing cancellation of name of Petitioner from the society's membership register and the share

certificate. Similarly, nothing observed in the judgment would come in the way of parties seeking declaration as to title and possession from the Court of competent jurisdiction.

31) The Petition accordingly succeeds in part, and I proceed to pass the following order:

- (i) The order dated 16 May 2016 passed by the Deputy Registrar *qua* direction no.1 therein for cancellation of membership of the Petitioner and her share certificate is set aside.
- (ii) However, the order dated 16 May 2016 is maintained *qua* direction no.2 (*restoration of water supply*) and direction no.3 (*return of car parking*).
- (iii) Respondent No. 2A shall be at liberty to exercise remedies available in law for securing a direction for removal of name of Petitioner from the membership register and from the share certificate from the Component Authority/Court.

32) With the above directions, the Writ Petition is **partly allowed** and disposed of. Rule is partly made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE , J.]

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signed by
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