



AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3433 OF 2025

ATUL  
GANESH  
KULKARNI

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ATUL GANESH  
KULKARNI  
Date: 2025.06.09  
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1. Harish Arora,  
Age 45 years, Occupation: Business,  
residing at Flat Nos.1 & 2, Trishul  
Building, 18-A, Kane Road,  
Bandra (West), Mumbai – 400 050
2. Venetia Palia  
Age 50 years, Occupation: Business,  
residing at Flat No.3, Trishul  
Building, 18-A, Kane Road,  
Bandra (West), Mumbai – 400 050
3. Phiroze Karmali,  
Age 55 years, Occupation: Business,  
residing at Flat No.51, Trishul  
Building, 18-A, Kane Road,  
Bandra (West), Mumbai – 400 050
4. Khalid Omar Wakani,  
Age 65 years, Occupation: Business,  
residing at Darus-Salaam 'A',  
Plot No.197-B, Kane Road,  
Bandra (West), Mumbai 400 050
5. Nafees Khan  
Age 64 years, Occupation: Business,  
residing at Flat No.52, Trishul  
Building, 18-A, Kane Road,  
Bandra (West), Mumbai – 400 050
6. Vinay Wadhwa  
Age 59 years, Occupation: Business,

... **Petitioners**

residing at Flat No.6, Trishul  
Building, 18-A, Kane Road,  
Bandra (West), Mumbai – 400 050

V/s.

1. The Deputy Registrar of Cooperative Societies, 'H-West' Ward, Mumbai havint its address at Mahasul Bhavan, 2<sup>nd</sup> Floor, Opposite Bandra Bus Depot, Bandra (West), Mumbai 400 050
2. Devdas A. Aroskar,  
Age Adult, Occupation: Advocate,  
Authorized Officer appointed by  
Dy. Registrar of Cooperative Societies,  
'H-West' Ward, Mumbai, having office  
at 51/2656. Safalya Cooperative Hsg.  
Society Ltd., Gandhi Nagar, Near Bank  
of Maharashtra, Bandra (East),  
Mumbai – 400 051.
3. Aarti Gupta,  
Adult, Occupation Business  
Indian Inhabitant, residing at Flat No.82,  
Trishul Building, 18-A Kane Road,  
Bandra (West), Mumbai 400 050
4. Sneha Rajani,  
Adult, Occupation Business  
Indian Inhabitant, residing at Flat No.12,  
Trishul Building, 18-A Kane Road,  
Bandra (West), Mumbai 400 050
5. Uday Shetty,  
Adult, Occupation Business  
Indian Inhabitant, residing at Flat No.II,

Trishul Building, 18-A Kane Road,  
Bandra (West), Mumbai 400 050

6. Bennie Philips  
Adult, Occupation Business  
Indian Inhabitant, residing at Flat No.42,  
Trishul Building, 18-A Kane Road,  
Bandra (West), Mumbai 400 050
7. Parmvir S. Parmar,  
Adult, Occupation Business  
Indian Inhabitant, residing at Flat No.32,  
Trishul Building, 18-A Kane Road,  
Bandra (West), Mumbai 400 050
8. Bobbie Phillips,,  
Adult, Occupation Business  
Indian Inhabitant, residing at Flat No.22,  
Trishul Building, 18-A Kane Road,  
Bandra (West), Mumbai 400 050
9. Bandra Trishul Premises Cooperative  
Housing Society Limited, A Society  
registered under the provisions of  
the Maharashtra Cooperative Societies  
Act, 1960 bearing Regn No.BOM/HSG/  
1220 of 1991 and having its registered  
address at Trishul Building, 18-A  
Kane Road, Bandra (W),  
Mumbai 400 050
10. The Divisional Joint Registrar, Coop.  
Societies, Mumbai, having office at  
6<sup>th</sup> Floor, Malhotra House, Opposite  
CSMT, Fort, Mumbai 400 001

... Respondents

Mr. Mayur Khandeparkar, with Mr. Himalaya Choudhari, Mr. Rahul Singh, and Ms. Pranali Raut i/by Legal Catalyst for the petitioners.

Mrs. V.R. Raje, AGP for respondents-State.

Mr. Girish Godbole, Senior Advocate with Mr. Rohit Gupta, Ms. Nitya Shah, Ms. Kinnar Shah, Ms. Aditi Bhargava and Mr. Brijesh Nittekar i/by Divya Shah Associates for respondent Nos.3 to 7.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : MAY 9, 2025**

**PRONOUNCED ON : JUNE 9, 2025**

**JUDGMENT:**

1. By way of the present petition instituted under Article 227 of the Constitution of India, the petitioners, who were members of the managing committee of respondent No.9-Society, have assailed the legality, validity, and propriety of three separate but interrelated orders passed by respondent No.1, the Deputy Registrar, Cooperative Societies. First, the petitioners impugn the order dated 11th February 2025 passed under Section 79A(3) of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as “the MCS Act” or “the said Act” for the sake of brevity), whereby they have been disqualified from continuing as members of the managing committee for a period of six years. Second, they also question the consequential order dated 20th February 2025 passed under Section 77A of the said Act, whereby an Authorized Officer has been appointed to take charge of the affairs of the society in place of the elected managing committee. Third, the petitioners challenge the interim order passed by

respondent No.10 on 20th February 2025 in pending revision proceedings, directing the parties to maintain status quo in relation to the subject matter arising from the order dated 1st February 2025 passed under Section 79A(3) of the said Act.

**2.** Before adverting to the legal questions involved, it would be appropriate to set out in brief the facts giving rise to the present controversy. The factual matrix reveals that the predecessor managing committee of respondent No.9-housing society had initiated the process of redevelopment of the society's property. To that end, a Special General Body Meeting (SGBM) was convened on 10th July 2023, wherein a resolution was passed to commence the redevelopment process. Thereafter, the Project Management Consultant engaged by the society prepared the tender documents, and invitations were issued to prospective developers to submit their proposals. However, allegations of mismanagement surfaced against the then committee, including certain petitioners and respondents herein. Consequently, by an order dated 29th November 2023, an Administrator was appointed to manage the affairs of respondent No.9-society. The Administrator assumed charge on 18th December 2023.

**3.** Subsequently, the election process was initiated, and on 25th August 2024, elections were duly held under the supervision of the Election Officer. The petitioners, along with respondent Nos.3 and 4, were elected as members of the new managing committee of the society. The newly elected committee assumed charge on 1st September 2024 and chose to continue with the redevelopment process earlier initiated. In the course of redevelopment, the newly

constituted committee proceeded to short-list developers and called upon them to submit revised and improved offers. Accordingly, on 9th and 10th October 2024, a Special General Body Meeting was held, in which two developers, MIC/LLP and Narang Realty, presented their enhanced proposals before the general body. Thereafter, a subsequent Special General Body Meeting was held on 16th October 2024, wherein the general body resolved to short-list MIC/LLP and Narang Realty as the final contenders. In continuation of the said process, a managing committee meeting was held on 24th October 2024 to take a final call regarding appointment of MIC/LLP as the developer.

4. It appears from the record that on 8th November 2024, respondent No.1, Deputy Registrar, received two complaints from members of the society, raising objections to the redevelopment process undertaken by the newly elected managing committee of respondent No.9-housing society. The complainants prayed for a declaration that all minutes of meetings, resolutions, and appointment letters pertaining to redevelopment activities undertaken on or after 25th August 2024, i.e., after the new committee took charge, be declared illegal, null and void ab initio. A further prayer was made for staying the implementation and effect of such decisions. The main contention in the complaints was that the voting process conducted during the Special General Body Meeting held on 16th October 2024 for short-listing and selecting the developer was allegedly in violation of the directives issued under Section 79A of the MCS Act, as incorporated by the Government Resolution dated 4th July 2019. According to the

complainants, the said Government Resolution prescribed mandatory procedural norms and safeguards to be observed by cooperative housing societies while undertaking redevelopment projects. Around the same time, another complaint was filed before respondent No.1, purportedly invoking powers under Section 73 of the MCS Act, alleging that the resolutions passed by the general body and the managing committee, particularly the resolution dated 24th October 2024 in furtherance of redevelopment, were vitiated by irregularities and procedural impropriety. The complaint called for appropriate action against the petitioners and other members of the managing committee.

5. In view of the said complaints, respondent No.1 initiated inquiry and on 18th December 2024, issued show-cause notices to petitioner Nos.4 to 6, calling upon them to file their reply and submit relevant documents in support of their actions. Pursuant thereto, the petitioners submitted their written replies along with necessary documents. Subsequently, on 16th January 2025, respondent Nos.3 to 8 filed their rejoinder submissions. After completion of the pleadings, the parties placed their respective written submissions on record.

6. Upon consideration of the materials placed before him, respondent No.1 passed an order dated 11th February 2025, in purported exercise of powers under sub-section (3) of Section 79A of the MCS Act. By the said order, the petitioners were disqualified from continuing as members of the managing committee of respondent No.9-housing society for a period of six years. The disqualification was based on the finding that the petitioners had

violated binding directives issued under Section 79A of the Act, specifically those relating to redevelopment procedures.

7. Aggrieved by the said order of disqualification, the petitioners preferred revision applications on 17th February 2025 under Section 154 of the MCS Act before the Divisional Joint Registrar, Pune Region, i.e. respondent No.10. Upon urgent mentioning, the revisional authority, on 20th February 2025, passed an interim order directing all parties to maintain status quo till 27th February 2025.

8. However, on the same day i.e. 20th February 2025, respondent No.1 passed yet another order appointing respondent No.2 as Administrator of respondent No.9-housing society, purportedly in exercise of powers under Section 77A of the said Act. Although the petitioners received an official copy of the said order from respondent No.1 on the same day, they were first informed about the Administrator's appointment only on 23rd February 2025, when respondent No.2 served a notice upon the petitioners requiring them to hand over charge, despite the fact that 23rd February 2025 was a Sunday. On the very next day, i.e. 24th February 2025, petitioner No.4 addressed a formal communication to respondent No.1, bringing to his notice the subsistence of the status quo order passed by the revisional authority and requested that no coercive steps be taken in the matter. Nevertheless, the revision applications were not taken up for hearing on 27th February 2025 and were adjourned to 7th March 2025. The interim order of status quo was extended accordingly. Left with no efficacious remedy and apprehending

further prejudice to their rights, the petitioners approached this Court by filing the present writ petition under Article 227 of the Constitution on 4th March 2025.

9. On 6th March 2025, after considering the urgency involved and the potential consequences arising from the disputed order, this Court was pleased to grant ad-interim relief in favour of the petitioners. By the said interim order, it was directed that the order dated 20th February 2025 appointing respondent No.2 as Administrator of respondent No.9-housing society shall not be acted upon and shall remain in abeyance until 20th March 2025. In the course of hearing, a specific grievance was raised on behalf of the petitioners to the effect that respondent No.1 had failed to take into account the binding precedent laid down by a coordinate Bench of this Court in *Writ Petition No.8732 of 2021*. According to the petitioners, the judgment in the said writ petition squarely covered the present factual scenario and required strict adherence by the subordinate authorities. It was alleged that despite respondent No.1 being duly informed of the said decision, he chose to disregard the ruling by resorting to a distinction based on factual context rather than addressing the ratio laid down therein. In view of the seriousness of this allegation, this Court deemed it appropriate to direct respondent No.1 to file a personal affidavit explaining the basis on which the said precedent was not followed and clarifying the reasoning that led to the contrary conclusion in the impugned order dated 11th February 2025. Thereafter, on 27th March 2025, upon examining the affidavit filed by respondent No.1 dated 18th March 2025, this Court noticed certain assertions

made in paragraph 19 thereof which appeared to rely upon facts not evident from the record. Accordingly, respondent No.1 was directed to file a further affidavit placing on record the precise source of information and documentary material, if any, which formed the basis of the factual assertions made in the said paragraph.

10. Mr. Khandeparkar, learned Advocate appearing on behalf of the petitioners, assailed the legality and validity of the impugned orders on the foundational ground that both the order of disqualification passed under Section 79A(3) and the order of supersession under Section 77A of the MCS Act, suffer from patent breach of the principles of natural justice. It was pointed out that petitioner Nos.1 to 3 were not issued any notice, nor were they afforded any opportunity of hearing in the proceedings leading to the disqualification under Section 79A(3). So far as the order under Section 77A is concerned, it was fairly admitted by the respondents themselves that the same was passed without issuing any show cause notice or giving any personal hearing to the petitioners. It was thus urged that both orders, which visit the petitioners with serious civil consequences, namely, disqualification for six years and removal from the elected post, stand vitiated in law and are liable to be treated as nullities. In support of his contentions, the learned Advocate placed reliance upon the decisions of this Court in *Maya Developers v. Neelam R. Thakkar*, (2016) 6 Bom CR 629; *Kamgar Swa Sadan Co-op. Hsg. Society Ltd. v. Divisional Joint Registrar*, 2018 SCC OnLine Bom 1319; and *Bay Home Properties Developers (P) Ltd. v. National Properties*

*Builders and Developers*, 2019 SCC OnLine Bom 5299. He submitted that as per the ratio of the aforesaid decisions, the Government Resolution dated 4th July 2019 issued under Section 79A of the Act is *directory* in nature and not mandatory, and as such, its non-observance cannot be a ground for disqualification unless it is shown that there was total non-compliance or mala fide exercise of power.

11. He further contended that in the present case, there has been substantial and material compliance with the directives contained in the said Government Resolution. According to him, notices of meetings were properly issued, disclosure of shortlisted developers was made in the meeting held on 9th and 10th October 2024, and members were granted adequate time of six days to evaluate the revised offers of developers before voting took place in the Special General Body Meeting held on 16th October 2024. He emphasized that all 18 registered members of the society were present and participated in the decision-making process. These decisions, he submitted, were subsequently ratified in the Special General Body Meeting held on 29th January 2025. He also submitted that the impugned order dated 11th February 2025 has been passed without prior consultation with the Federal Society as mandated, thereby rendering it unsustainable in law. Additionally, it was argued that respondent No.1 demonstrated bias in favour of the complainants by invoking Section 79H(3) of the MCS Act, which stood repealed and had no applicability. It was further contended that respondent No.1, in his affidavit dated 18th March 2025, relied upon facts which were not part of the original record and,

despite being directed by this Court, failed to disclose the source of such information. The learned counsel submitted that the conduct of respondent No.1 amounted to favoritism towards respondent Nos.3 to 8, thereby attracting the principle laid down by the Supreme Court in *Union of India v. K.K. Dhawan*, (1993) 2 SCC 56, particularly clauses (iv) and (v) of paragraph 28. In such a situation, he urged, the mere availability of an alternative statutory remedy under Section 154 of the Act ought not to deter this Court from exercising its supervisory jurisdiction under Article 227 to prevent miscarriage of justice and protect the democratic process in cooperative governance.

**12.** Per contra, Mr. Godbole, learned Senior Advocate appearing for respondent Nos.3 to 7, supported the impugned orders and opposed the maintainability of the writ petition. He submitted that the petitioners have already availed of the alternate statutory remedy by filing revision applications under Section 154 of the Act, and those proceedings are still pending. According to him, such revision is an efficacious remedy and, therefore, in view of well-settled principles of judicial restraint, this Court should decline to exercise its extraordinary jurisdiction. He further submitted that the petitioners had made a factually incorrect statement before this Court on 6th March 2025, by alleging that they had brought to the notice of respondent No.1 the judgment in *Vilas Vishnu Jadhav v. State of Maharashtra*, Writ Petition No.8732 of 2021. In support of his submission, he placed on record affidavits of the Advocates who were present during the relevant hearings and contended that the said judgment was never

produced before respondent No.1, nor was it argued during the proceedings.

13. Mr. Godbole relied upon the unreported judgment of this Court in *Mercury CHSL v. State of Maharashtra & Ors.*, Writ Petition No.6042 of 2025, decided on 8th May 2025, to submit that the impugned orders were well-reasoned and passed within the scope of authority conferred under the Act. He argued that the judgment in *Kamgar Swa Sadan CHSL (supra)* did not directly deal with the consequence of non-compliance of Section 79A directives in redevelopment matters. Referring to the judgment in *Vijay Lakhi v. District Deputy Registrar*, Writ Petition No.1889 of 2025, he contended that though the Registrar has no power to annul resolutions of the general body, he retains the jurisdiction under Section 79A(3) to disqualify members of the managing committee for breach of directives issued under Section 79A(1).

14. He urged that the judgment in *Vilas Vishnu Jadhav (supra)* has rightly been distinguished by respondent No.1, as it pertained to a different factual context. In the present case, there was clear evidence of procedural lapses, lack of transparency, and absence of confidence-building among the majority members of the society. Hence, the Registrar's interference was justified. However, if this Court is of the view that *Vilas Vishnu Jadhav* squarely applies to the present facts, he submitted that a reference be made to a Larger Bench, as there is an apparent conflict between the views taken in *Vilas Vishnu Jadhav* and *Vijay Lakhi*. He concluded by submitting that the material placed on record does not establish substantial compliance with the 79A directives. He further alleged

that the Chairman of the society had a vested interest in the redevelopment process and had acted in breach of trust. Therefore, the writ petition, according to him, ought to be dismissed and the petitioners relegated to pursue their statutory revision.

15. In support of the preliminary objection regarding maintainability of the writ petition, Mr. Godbole placed reliance upon several decisions of the Hon'ble Supreme Court including:– *Jai Singh v. Union of India*, (1977) 1 SCC 1,– *K.S. Rashid and Son v. Income-Tax Investigation Commission*, (1954) 1 SCC 69,– *Radha Krishan Industries v. State of Himachal Pradesh*, (2021) 6 SCC 771, and – *Whirlpool Corporation v. Registrar of Trade Marks*, (1998) 8 SCC 1. He submitted that these judgments clearly lay down the principle that the High Court should not interfere under Article 227 when equally efficacious alternative remedies are available under the statute.

16. Mrs. Raje, learned Assistant Government Pleader appearing for the State authorities, adopted the submissions advanced by Mr. Godbole. She further submitted that the petitioners had made an incorrect factual statement before this Court during the hearing held on 6th March 2025 by asserting that the judgment in *Vilas Vishnu Jadhav* was brought to the notice of respondent No.1. She emphasized that the essential procedural requirements laid down in the Government Resolution dated 4th July 2019 were not followed in their letter and spirit. In her submission, there was no substantial compliance with the directives under Section 79A of the Act, and therefore, the impugned orders are not liable to be interfered with. She accordingly prayed for dismissal of the writ

petition and for the petitioners to be relegated to pursue the revisional remedy.

17. In light of the rival submissions, the following principal points arise for determination in this case:

(i) Whether the existence of an alternate statutory remedy under the MCS Act bars the present writ petition, or whether this case falls under the exceptions permitting the Court to exercise jurisdiction under Article 226.

(ii) Whether the disqualification of the petitioners for alleged non-compliance with the GR dated 4th July 2019 is legally sustainable, including sub-questions as to the nature of the 2019 guidelines (mandatory or directory), and the scope of Section 79A(3) itself.

(iii) Whether the process leading to the impugned orders violated the principles of natural justice and fair hearing, and if so, with what effect.

(iv) Whether the appointment of an Administrator under Section 77A in the facts of the case was within the authority's lawful powers and justified, or whether it amounted to an improper supersession of the managing committee.

(v) Whether the petitioners have established that the impugned decisions were tainted by bias, malice in law, or reliance on irrelevant/repealed provisions, so as to call for invalidation on grounds of arbitrariness.

### Maintainability of Writ Petition–Availability of Alternate Remedy

18. One of the first objections raised by the respondents is that the present writ petition is not maintainable because the petitioners have an alternate statutory remedy available to them under Section 154 of the Maharashtra Co-operative Societies Act, 1960. The objection is that since a revision application is filed before the respondent no. 10, the petitioners should be directed to avail that remedy instead of directly coming to this Court.

19. It is well-settled in law that the rule regarding exhaustion of alternate remedies is not an absolute bar to the jurisdiction of this Court. It is a rule of judicial discretion, not of compulsion. In other words, this Court has the power under Article 226 or 227 of the Constitution of India to entertain a writ petition even when an alternate remedy is available, if the facts of the case so warrant. The Supreme Court has time and again clarified that the presence of an alternate remedy does not by itself take away the jurisdiction of the High Court.

20. In the well-known case of *Whirlpool Corporation v. Registrar of Trade Marks* [(1998) 8 SCC 1], the Supreme Court laid down three exceptions to the general rule that a writ should not be entertained when an alternate remedy exists. These three exceptions are: (a) when the petitioner seeks to enforce fundamental rights; (b) when there is a clear violation of principles of natural justice; (c) when the order is passed by an authority without jurisdiction, or when the validity of a statute itself is under challenge. These exceptions have been consistently

applied and affirmed by the Supreme Court in *Harbanslal Sahnia v. Indian Oil Corporation* [(2003) 2 SCC 107] and recently in *Radha Krishan Industries v. State of Himachal Pradesh* [(2021) 6 SCC 771].

**21.** There can be no quarrel with the settled principle that where an alternative statutory remedy is available, the writ jurisdiction under Article 226 is ordinarily not to be invoked. However, it is equally well settled that the existence of an alternate remedy does not absolutely bar the jurisdiction of the High Court, especially where the case falls within one of the recognized exceptions to the general rule.

**22.** The Full Bench of this Court in *Shireen Sami Ghadiali & Ors. v. Spenta Cooperative Housing Society Ltd.*, 2011 (3) Mah LJ 486, has laid down the guiding principles on this issue. It held that although revision under Section 154 is a remedy available as of right to an aggrieved person, the High Court may still entertain a writ petition notwithstanding the availability of such remedy, where the case falls within any of the judicially recognized exceptions. One of the exceptions is the situation where there exists a binding judicial precedent in favour of the petitioners, and the authority, has chosen to ignore it.

**23.** In the present case, as already discussed earlier, the judgment in *Vilas Vishnu Jadhav (Supra)* has clearly held that the Government Resolution dated 4th July 2019, issued under Section 79A(1), is recommendatory and directory in nature. The judgments in the case of *Maya Developers (Supra)*, *Kamgar Swa*

*Sadan (supra)* and *Bay Home Properties (supra)* were specifically brought to the attention of respondent No.1 prior to the issuance of the impugned order, yet he consciously chose to sidestep the binding precedents and proceeded to impose disqualification based solely on the Government Resolution, without any independent legal justification. This constitutes a sufficient ground to invoke the writ jurisdiction of this Court.

**24.** Additionally, reliance may also be placed on the judgment of the Supreme Court in *State of M.P. v. Sanjay Nagayach*, (2013) 7 SCC 25. In paragraph 34 of the said decision, the Supreme Court categorically upheld the High Court's exercise of writ jurisdiction under Article 226 despite the availability of an appellate remedy, as the order passed by the Joint Registrar therein was found to be arbitrary and in clear violation of statutory safeguards. The Court held that where the impugned action is in violation of mandatory procedural requirements or principles of natural justice, the High Court is justified in exercising its extraordinary jurisdiction to prevent injustice. The reasoning and principle laid down in *Sanjay Nagayach* apply with equal force to the facts of the present case.

**25.** Furthermore, the record in the present matter clearly shows that the order dated 11th February 2025, which disqualified the petitioners for a period of six years, was passed without issuing any notice to petitioner Nos.1 to 3, in clear breach of the audi alteram partem rule. Similarly, the order dated 20th February 2025 passed under Section 77A, appointing an Administrator, was passed without publication of notice as required by law, thereby depriving the society members of an opportunity to object to the

proposed supersession.

**26.** Both these orders have been passed without following minimum standards of natural justice, and hence fall squarely within the exception laid down by the Supreme Court in *Whirlpool Corporation (Supra)*, which permits a writ court to entertain a petition where the action is vitiated by procedural irregularity, violation of natural justice, or lack of jurisdiction, despite the existence of an alternative remedy.

**27.** In addition to the above, it must also be borne in mind that, as rightly pointed out by the petitioners, this case is covered by at least three binding decisions of this Court holding that the directions under Section 79A(1) of the MCS Act, as contained in the Government Resolution dated 4th July 2019, are merely guidelines and not mandatory commands. This fact brings the present case squarely within the principle laid down by the Full Bench in *Shireen Ghadiali*, where it was held that when binding precedents are ignored, judicial intervention under Article 226 is not only warranted but becomes necessary to preserve consistency in the application of law.

**28.** Applying these settled principles to the present case, this Court finds that two important and exceptional features stand out:

First, the petitioners have made a strong prima facie case that the impugned actions of disqualification and supersession were taken in breach of natural justice, as no fair opportunity of hearing was granted to petitioner Nos.1 to 3 before such serious consequences were imposed. It

would fall squarely within the second exception laid down in *Whirlpool Corporation*.

Second, the petitioners have alleged that the authority acted without proper jurisdiction, and in a manner that was procedurally unfair. It has been pointed out that the respondent no. 1 relied on a Government Resolution which is only directory in nature, and even referred to provisions that were repealed and not in force. The matter would therefore involve a deeper question of legal validity and procedural fairness.

**29.** The respondents' reliance on the decision of *Jai Singh v. Union of India* [(1977) 1 SCC 1] is misplaced. In that case, the petitioner had already chosen to file a civil suit, and also raised issues involving disputed facts which were not suitable for summary determination by a writ court. In the present case, however, there are no complex or disputed facts requiring a full-fledged trial. The documents and proceedings relied upon by both parties are largely on record. The real issue is how the law applies to those facts, and that is something well within the jurisdiction of this Court under Article 226.

**30.** In the opinion of this Court, therefore, the present writ petition deserves to be entertained despite the existence of a statutory remedy. The issues raised go to the root of natural justice, jurisdiction, and legal propriety. To send the petitioners to another forum in the face of such clear allegations would cause unnecessary delay, multiplicity of proceedings, and possibly render

the whole exercise futile.

**31.** Therefore, in light of the settled legal position, this Court finds no merit in the objection raised as to the maintainability of the writ petition. On the contrary, the present case falls within the well-established exceptions to the rule of alternate remedy, and the interference of this Court is warranted to prevent injustice arising from procedural impropriety, jurisdictional error, and non-compliance with binding judicial authority.

**32.** It is accordingly held that this writ petition is entertainable. The objection raised by the respondents regarding alternate remedy is rejected.

### **Nature of the 2019 Government Resolution and Validity of Disqualification**

**33.** Central to this case is the question, whether non-compliance with the redevelopment guidelines issued under Section 79A can entail the extreme consequence of disqualification of an entire managing committee. To answer this, one must ascertain the character of those guidelines, are they mandatory rules or advisory norms?

**34.** In order to examine the challenge raised in the present writ petition, it would be appropriate to first consider the scope and ambit of the powers conferred by Section 79A of the MCS Act. Section 79A forms part of Chapter VIII of the said Act, which deals with the supervision, control, and regulation of cooperative societies by statutory authorities. The said section reads as follows:

*“79A. (1) If the State Government, on receipt of a report from the Registrar or otherwise is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions.*

*(2) The State Government may modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions may impose such conditions as it may deem fit.*

*(3) Where the Registrar is satisfied that any person was responsible for complying with directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed, without any good reason or justification, to comply with the directions, the Registrar may by order –*

*(a) if the person is a member of the committee of the society, declare him to be disqualified to be or to continue to be a member of the committee of any society for a period of six years from the date of the order;*

*(b) if the person is an employee of the society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this*

*order, declare them disqualified as provided in clause (a) above;*

*Provided that, before making any order under this subsection, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society to which the society is affiliated:*

*Provided further that, such federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to take action under this section and the Registrar shall be at liberty to proceed further to take action accordingly.*

*Any order made by the Registrar under this section shall be final.”*

**35.** A plain reading of the aforesaid provision makes it clear that Section 79A empowers the State Government to issue binding directions to cooperative societies, either generally or specifically, in certain well-defined circumstances. The power under subsection (1) is broad in scope but not unguided. It can only be exercised when the Government is satisfied that such directions are necessary either (i) in public interest, or (ii) for ensuring proper implementation of cooperative production or development programmes approved by the State, or (iii) to secure proper management of the affairs of the society, or (iv) to prevent mismanagement or conduct detrimental to the interest of its members, depositors, or creditors. The use of the expression “shall be bound to comply” signifies the nature of such directions once validly issued.

36. Sub-section (3) of Section 79A confers authority on the Registrar to take consequential action in case of non-compliance with such directions. If the Registrar is satisfied that a person who was responsible for complying with the directions has failed to do so without sufficient justification, he is empowered to pass an order of disqualification against such person. The disqualification can extend up to a period of six years and operates to prevent such a person from being, or continuing as, a member of the committee of any cooperative society. However, this power under sub-section (3) is not unrestrained. The Registrar is statutorily duty-bound to adhere to principles of natural justice. The provision mandates that before passing an order of disqualification, the concerned person must be given a reasonable opportunity of being heard. Additionally, the Registrar must consult the federal society to which the concerned cooperative society is affiliated. The consultation, though mandatory, is time-bound, if the federal society does not furnish its opinion within forty-five days, the law presumes absence of objection, and the Registrar is at liberty to proceed further.

37. It is also relevant to note that the statute provides finality to the order passed by the Registrar under this provision. That, however, cannot mean that the Registrar's order is immune from judicial review. What is meant by finality in the statutory sense is that the order is not appealable before any other authority under the MCS Act. However, where allegations of procedural irregularity, non-compliance with natural justice, or jurisdictional errors are raised, such an order is always subject to scrutiny by this

Court in exercise of its constitutional powers.

**38.** On cumulative reading, Section 79A thus strikes a balance between the need for administrative control in public interest and the procedural safeguards intended to prevent arbitrary exercise of power. The Registrar must be satisfied on objective material; the delinquent must be afforded a fair hearing; the federal society must be consulted; and the reasons must be discernible from the order. The power is quasi-judicial in character and carries civil consequences, and therefore, strict adherence to procedural fairness is the legislative intent behind the provision.

**39.** When tested against this framework, the Government Resolution dated 4th July 2019, issued under Section 79A(1), assumes critical significance. On a careful reading of its clauses, it becomes clear that the responsibilities assigned therein are structured in two ways, certain functions are to be discharged by the Secretary acting in an administrative capacity, and others are to be undertaken by the managing committee collectively.

**40.** For instance, the first part of Clause 5 enjoins the Secretary to convene the general body meeting, whereas the second part obligates the managing committee to seek quotations from a Project Management Consultant and place proposals before the general body. Clause 11 again places a duty on the Secretary to prepare minutes of the general body meeting and furnish them to all members. Likewise, Clause 15(a) casts the responsibility on the Secretary to seek reports, and Clause 16 requires him to publish notices. This distribution of functions clearly reflects that most

operational steps under the Resolution are procedural in nature and typically within the power of the Secretary, who acts as the administrative link between the committee and the general body. The managing committee, on the other hand, is entrusted with policy-level decision-making but always as a collective body. Therefore, it would be difficult to isolate any one member of the managing committee and fasten personal liability unless the directive itself mandates an individual act, or there is evidence of deliberate obstruction or individual deviation from a collective resolution.

41. It is, therefore, necessary to emphasise the statutory distinction in language and purpose between Sections 78, 78A, and 79A(3). Having examined the statutory framework of Section 79A as a whole, it becomes necessary to turn to a more focused analysis of sub-section (3) of the said provision. Sub-section (3) confers upon the Registrar the power to disqualify a person, who is a member of the managing committee, if he is found to have failed, without any sufficient cause or justification, to comply with directions issued under sub-section (1). The essential requirement for invoking such power is the Registrar's satisfaction, founded on material, that such person bore responsibility to ensure compliance and failed in discharging the same. However, this power cannot be interpreted or exercised in isolation. The language and legislative design of Section 79A(3) must be read harmoniously with Sections 78 and 78A of the MCS Act, which deal with suspension and supersession of the committee or individual members under broader grounds such as persistent default, negligence, or acts

prejudicial to the interest of the society. Section 78 empowers the Registrar to suspend or remove the entire committee for acts of collective failure or dereliction, whereas Section 78A empowers the Registrar to supersede the committee or remove any member thereof if statutory prerequisites are satisfied. What distinguishes Section 79A(3) from Sections 78 and 78A is its narrower focus and individualized character. It does concern itself with with a defined breach of a binding direction, issued under Section 79A(1), and traceable to a specific person's dereliction. Thus, for Section 79A(3) to apply, the Registrar must first identify whether the responsibility to act was specifically placed upon the person concerned by the directive, and only thereafter can disqualification follow. While Section 78 empowers the Registrar to take action against the committee as a whole for collective default or negligence, and Section 78A allows action either against the committee or individual members for specific misconduct, Section 79A(3) is narrower in scope and person-specific in design. It presupposes that the directive issued under Section 79A(1), read along with relevant rules or the bye-laws of the society, imposes a clear obligation on a person, whether as a committee member or as an employee. Only when such obligation can be discerned and the Registrar is satisfied that the person has failed to discharge that duty without sufficient justification, can the consequence of disqualification under Section 79A(3) be lawfully attracted. This satisfaction must stem from a conjoint reading of the directions under Section 79A(1), the MCS Rules, and the registered bye-laws of the society. It must be shown that such person was under a

statutory or institutional duty to act in a particular manner, and that he consciously failed or refused to do so. The burden, therefore, lies to demonstrate that the directive required something specific from the person, that the individual failed in that obligation, and that such failure was without just cause. Absent such findings, disqualification under Section 79A(3) cannot be sustained merely because one is part of the managing committee. Disqualification is not automatic by association; it must be grounded in demonstrated dereliction.

**42.** Applying the aforesaid legal principles to the facts of the present case, it becomes necessary to determine whether mere deviation from the Government Resolution dated 4th July 2019, without anything further, would justify the extreme consequence of disqualification under Section 79A(3) of the Maharashtra Cooperative Societies Act.

**43.** The scope and effect of Section 79A of the MCS Act, particularly in the context of Government Resolutions issued thereunder, has been the subject of judicial interpretation by multiple coordinate Benches of this Court. One of the leading decisions on this point is the judgment in *Maya Developers (Supra)*, wherein the Court, in paragraph 79, after closely analysing the 2009 directive governing redevelopment, came to the conclusion that the directive issued under Section 79A does not have the force of a mandatory statutory command, but instead lays down broad guidelines. In *M/s. Maya Developers*, this Court was dealing with a situation where certain members of a society objected that the managing committee had not strictly followed

the 2009 guidelines in appointing a developer (the case arose in a civil suit context). The Court observed that the choice of issuing such a directive under Section 79A, rather than through a statutory amendment or a binding regulation, itself indicated the intent of the Government to merely provide a framework for guidance, rather than a mandatory rulebook. It was further noted that the language of the directive employed expressions like "should" rather than "shall" or "must", underscoring its directory nature. Importantly, the Court clarified that material compliance, involving participation, notice, and disclosure, would suffice and that non-literal adherence to every clause would not render the process invalid. The judgment strongly emphasized that the authority of the general body of a cooperative housing society, which represents its democratic will, must be preserved, and that guidelines cannot override decisions taken by a duly convened general body meeting. The Court made a significant observation that it was "impossible to accept that the 2009 directive is mandatory", and that what is essential is to ensure broad participation, transparency, and an informed decision by the majority. If those ends were met, technical non-compliances would not vitiate the process.

44. The said interpretation in *Maya Developers* was considered and approved by another coordinate Bench in the case of *Kamgar Swa Sadan Cooperative Housing Society Ltd.*, wherein the Court, in paragraphs 36 and 37, reiterated that the 2009 directive is not mandatory and observed that so long as material compliance is shown, no adverse inference can be drawn. In that case, the

managing committee itself challenged a show-cause notice from the Registrar which threatened action for not following the 2009 guidelines in toto. This Court quashed the Registrar's notice, holding that the 2009 guidelines were directory and not mandatory, since they "provided no consequences for their non-compliance". The Court noted that the directives' objective was to assist societies and protect members, and nothing in the text of the 2009 GR indicated that a failure to comply would lead to any automatic dissolution of the committee or other punishment. Importantly, the Court cautioned that the State cannot use these directives to interfere in a society's affairs unless the non-compliance is of such nature that it defeats the directives' very purpose and causes prejudice to the members. Simply put, if a society substantially complies and the redevelopment decision is backed by a bona fide majority, the Registrar should not readily wield the axe of Section 79A(3). The Court further held that even if there was a deviation from the procedural steps laid out in the 2009 Government Resolution, no consequences were prescribed under the resolution itself for such non-compliance. Therefore, the resolution could not be considered binding in nature, and its breach could not attract disqualification under Section 79A(3). The Court, therefore, held that the resolution must be treated as directory, not mandatory.

45. The development continued with *Bay Home Properties Developers (P) Ltd. & Ors.* (Supra). Although the case involved private parties (two rival developers and factions within a society), this Court discussed the 2009 directives and reiterated that their

interpretation cannot be static or uniform regardless of context. The Court recognized that some members might insist on strict compliance treating them as mandatory, whereas outsiders (like a losing developer) cannot invoke them to invalidate a society's majority decision. The underlying message was that the directives are for the benefit of the members, not a weapon for third parties or a tool for needless technical obstruction. Thus, even that decision fell in line with treating the directives as broadly prescriptive but not inflexible commands. The GR dated 4th July 2019, which concerns us, did not materially alter the judicial understanding that had developed. The Division Bench upheld the legal principle that Government Resolutions under Section 79A, which do not provide for consequences in case of non-compliance, are to be construed as recommendatory in nature.

46. In fact, when *Vilas Vishnu Jadhav* (Supra) came up in this Court, the 2019 guidelines were squarely at issue. There, as in this case, managing committee members had been disqualified for purported non-compliance with the redevelopment guidelines. The Court set aside those disqualifications, holding unequivocally that non-compliance with the 4th July 2019 GR did not automatically invite disqualification. The judgment notes that “nothing in the 4th July, 2019 GR indicated that non-compliance would lead to mandatory consequences such as disqualification”. It also pointed out the internal inconsistency in the impugned order of that case (similar to the one at hand) where the operative part overshoot what the findings justified. In paragraphs 8 to 10 of the said judgment, the Court recorded that the only reason for the

disqualification of the petitioners therein was the alleged non-compliance with the 2019 Government Resolution. The Court held that such non-compliance, even if assumed, could not form the basis for disqualification under Section 79A(3), since the 2019 resolution, like its 2009 predecessor, did not provide for any consequences in case of deviation. It was specifically noted that the ratio of *Kamgar Swa Sadan* applied squarely to the 2019 resolution as well, because the 2019 resolution too governed redevelopment and did not alter the legal character of the directive, it merely superseded the previous guidelines with an updated version. The coordinate Bench concluded that the legal position remained unchanged: that guidelines issued under Section 79A are directory, and disqualification of elected members for their alleged non-compliance would amount to exceeding jurisdiction under Section 79A(3). Accordingly, the orders disqualifying the petitioners in *Vilas Vishnu Jadhav* were quashed and set aside.

47. In view of this consistent judicial position, I hold that the Government Resolution of 4th July 2019 is directory in nature. Its guidelines are intended to be followed to ensure a fair and transparent redevelopment process; however, every deviation or procedural lapse by itself does not constitute actionable wrong unless it is shown to violate the object of the directives or violate some express statutory requirement. If the managing committee substantially adheres to the mandate, for example, by informing members, taking a majority vote, selecting a developer in a broadly competitive manner, then it cannot be said to have “failed to comply” merely because an arithmetical requirement or a

documentation formality was not fulfilled to the letter. As observed in *Maya Developers(Supra)* , “it is sufficient if participation, notice and disclosure were ensured”, with majority will prevailing in a properly convened meeting. This ensures the autonomy of the cooperative society in decision-making, which is itself a goal of the cooperative law.

48. Furthermore, it is a fundamental principle of administrative law that Government Resolutions, Circulars, or Executive Instructions are subservient to statutory enactments and must yield where there is any inconsistency. They are framed to facilitate implementation of statutes, not to supplant or override them. It is equally well settled that while the Government may be bound by its own circulars in administrative decision-making, such circulars or resolutions cannot override statutory law nor can they bind constitutional courts while interpreting legislative provisions. This Court is thus not constrained by the language of the Resolution alone but is duty-bound to test its application in the light of statutory text, legislative intent, and settled judicial interpretation. Once the Government Resolution dated 4th July 2019 was interpreted in authoritative judicial pronouncements to be merely directory and not mandatory in character, it was incumbent upon respondent No.1, acting as a statutory authority, to follow the binding precedent and give effect to the legal position settled by this Court.

49. In the present case, the petitioners had specifically brought to the notice of respondent No.1 the judgments in *Maya Developers and Kamgar Swa Sadan CHSL*, which reaffirms the

directory nature of the 2009 Government Resolution. Respondent No.1, however, declined to follow the ratio laid down therein, on the ground that the facts and circumstances in the present case were distinguishable. In doing so, respondent No.1 has erred in principle. It was the duty of respondent No.1, as a statutory authority functioning within the territorial jurisdiction of this Court, to follow the binding interpretation of law laid down by the parent High Court. This duty flows not only from the principle of judicial discipline but also from the mandate of Article 141 of the Constitution of India, which gives binding force to the law declared by constitutional courts. It must be emphasised that once a legal principle is laid down by a High Court, it binds all authorities within the territorial jurisdiction of the Court, irrespective of factual variation, unless the precedent is distinguished on a question of law or set aside by a higher forum. The ratio decidendi of a judgment, being the principle of law laid down, is binding regardless of factual distinctions, unless the Court has itself limited its applicability to a particular factual matrix. The principle of judicial discipline obligates all statutory authorities to follow binding judicial precedent. Respondent No.1, being a quasi-judicial authority, was not at liberty to disregard the interpretation placed upon the Government Resolution by this Court merely on subjective assessment of facts. To do so would amount to judicial indiscipline and a denial of the rule of law. Administrative convenience or disagreement with the ratio cannot justify deviation from binding precedent. In such a situation, the impugned action of disqualification must be held to be vitiated on

the ground of legal perversity, as it rests on a premise already negated by settled judicial precedents. Therefore, respondent No.1 was not entitled to bypass the effect of binding precedent merely on the ground that circumstances in the present case were factually distinguishable.

50. In this context, it would be apposite to refer to the decision of the Supreme Court in *State of Madhya Pradesh & Ors. v. Sanjay Nagayach & Ors.*, (2013) 7 SCC 25. In that case, the Supreme Court was dealing with the validity of an order passed by the Registrar of Cooperative Societies whereby an elected managing committee of a cooperative society was superseded before completion of its term. The action of supersession was challenged on the ground that there was no meaningful or effective consultation, and the Registrar had failed to consider binding judicial precedents of the High Court. The Supreme Court, in its authoritative pronouncement, reiterated the settled position that statutory authorities such as the Registrar or Joint Registrar of Cooperative Societies are under a legal obligation to follow judicial precedents. The Court observed that the ratio decidendi of a judgment has the force of law and binds all authorities acting under statutory powers when they are called upon to decide similar issues. Any departure from binding precedent, without legal justification, would amount to a breach of constitutional discipline and administrative propriety.

51. While disapproving the conduct of the Joint Registrar in that case, who had brushed aside binding decisions of the Madhya Pradesh High Court, the Supreme Court observed that it could not

comprehend how a statutory authority could act in disregard of settled judicial pronouncements. It was further held that statutory decisions are not to be taken in isolation but in conformity with legal principles crystallized through court judgments.

52. In addition to the above reasoning, the Supreme Court issued broad and significant directions to be followed uniformly by all authorities in cases involving supersession or disqualification of elected cooperative committees, which include the following:

(i) Supersession of an elected Managing Committee/Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the term for which it is elected.

(ii) Elected Committee in office be not penalised for the shortcomings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous Committees.

(iii) Elected Committee in office be given sufficient time, say at least six months, to rectify the defects, if any, pointed out in the audit report with regard to incidents which originated when the previous committee was in office.

(iv) The Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities, including consultation with the financing banks/controlling banks, etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not.

(v) The Registrar/Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also to disqualify them for standing for election in the succeeding elections. The Registrar/Joint Registrar therefore is duty-bound to exercise his powers bona fide and not on the dictation or direction of those who are in power.

(vi) The Registrar/Joint Registrar shall not act under political pressure or influence and, if they do, be subjected to disciplinary proceedings and be also held personally liable for the cost of the legal proceedings.

(vii) Public money is not to be spent by the State Government or the Registrar for unnecessary litigation involving disputes between various factions in a cooperative society. Taxpayers' money is not expected to be spent for settling those disputes. If found necessary, the same is to be spent from the funds available with the Bank concerned.

**53.** These directions laid down by the Supreme Court continue to hold the field and are of binding force across the country. They reinforce the principles of democratic governance, fairness in action, and judicial discipline which must guide all statutory authorities while exercising coercive powers against elected cooperative bodies.

**54.** Thus, the interpretation of Section 79A(1), as declared by this Court, effectively takes away the discretion vested in respondent No.1 to disqualify managing committee members

solely on the basis of non-compliance with the said Government Resolution. In such a situation, any punitive action based on a contrary reading of the law is liable to be held as vitiated in law, being founded on a misinterpretation of the statutory provision and in disregard of binding judicial authority.

**55.** Moreover, on a careful analysis of the material placed on record, it emerges that the decision to select the developer for the redevelopment project was not taken unilaterally by the managing committee but was arrived at through a resolution passed by the general body of the society. The general body, being the supreme decision-making authority under the scheme of the MCS Act and the bye-laws of housing societies, had deliberated upon the proposals and had, through democratic means, approved the developer's appointment. In such a situation, the managing committee cannot be said to have acted arbitrarily or contrary to the collective will of the society.

**56.** It is well settled that the managing committee, acting in furtherance of the general body's resolution, cannot be visited with penal consequences unless there is specific material to show that the committee members indulged in acts of personal misconduct, dishonest conduct, or willful disregard of statutory obligations.

**57.** If at all, there were any allegations of fraud, financial irregularities, or misuse of office during the redevelopment process, the appropriate course of action available to the Registrar was to invoke the powers under Section 78A of the Maharashtra Cooperative Societies Act. Section 78A specifically empowers the

Registrar to initiate action for removal or supersession of a member of the managing committee or the entire committee, if satisfied that there exists material indicating mismanagement, breach of trust, or acts detrimental to the interest of the society. That provision also incorporates procedural safeguards, including issuance of notice and opportunity of hearing.

**58.** However, in the present case, the Registrar has not proceeded under Section 78A. Instead, he has chosen to exercise power under Section 79A(3) to disqualify the petitioners for a period of six years, purportedly on the ground of non-compliance with directions issued under Section 79A(1), i.e. the Government Resolution dated 4th July 2019. As already held earlier in this judgment, such directions are recommendatory in nature and do not attract penal consequences in the absence of an express statutory violation or deliberate defiance of binding obligations. Section 79A(3) cannot be stretched to cover allegations of irregularities or mismanagement unless it is first shown that there existed a specific individual duty under the directive, and that such duty was breached without justification. In the facts of this case, no such finding has been recorded by respondent No.1. The disqualification imposed, therefore, is not only disproportionate to the nature of the alleged breach, but also procedurally and jurisdictionally unsustainable. Accordingly, once it is accepted that the selection of developer was based on a general body resolution, and in the absence of any concrete findings of fraud, collusion, or mala fides on the part of individual committee members, the invocation of Section 79A(3) for disqualifying them for six years is

clearly misconceived and legally impermissible. The appropriate recourse in case of established wrongdoing lies elsewhere in the statute, such as under Section 78A, but not under the limited framework of Section 79A(3).

### **Violation of the principles of natural justice**

**59.** Further, the petitioners have rightly drawn the attention of this Court to a serious procedural irregularity in the manner in which the proceedings under Section 79A(3) of the Maharashtra Cooperative Societies Act, 1960, were conducted. It is an admitted position, and also evident from the record, that the show cause notices initiating proceedings under Section 79A(3) were issued only to petitioner Nos.4 to 6. However, there is nothing on record to suggest that similar notice or opportunity of hearing was ever extended to petitioner Nos.1 to 3, who were equally affected by the final order dated 11th February 2025.

**60.** This omission assumes considerable significance in view of the fact that the order dated 11th February 2025 imposes a civil consequence of disqualification for six years against all petitioners, including petitioner Nos.1 to 3. The law is well settled that any order affecting the civil rights or legal status of a person must be preceded by notice and an opportunity of hearing. This principle is a foundational component of natural justice and finds implicit recognition in every statutory process that may result in adverse consequences for an individual.

**61.** It is trite that no person can be condemned unheard, a doctrine long established in Indian jurisprudence. Even where the

statute does not expressly mandate issuance of notice, the requirement of fair hearing is to be read into the procedure wherever the administrative or quasi-judicial authority proposes to pass an order prejudicial to the interests of a person. The Supreme Court, in a catena of decisions, has reiterated that compliance with principles of natural justice is an indispensable requirement, particularly in matters involving penalty or disqualification.

### **Consultation with federal society**

62. Further, an additional and equally significant infirmity in the impugned action lies in the failure of respondent No.1 to adhere to the statutory requirement of consultation with the federal society, as expressly contemplated under the first proviso to Section 79A(3) of the Maharashtra Cooperative Societies Act, 1960. The provision mandates that before passing an order disqualifying a member of the managing committee, the Registrar shall consult the federal society to which the society is affiliated. The consultation, far from being a mere formality, is an integral safeguard built into the statute. In the present case, it is an admitted position that no such consultation was undertaken before passing the disqualification order dated 11th February 2025. The failure to consult strikes at the lawfulness of the order.

63. It is pertinent to note that this Court has, on multiple occasions, taken a consistent view that consultation must be real, effective, and meaningful. It is not a ritualistic exercise. The federal society, being a supervisory institution with domain knowledge and representative character, is expected to provide an

informed opinion on whether disqualification of a managing committee member is warranted in the facts of a given case. Such input, based on ground realities, often serves as a check on administrative overreach. [See: *Karbhari Govindrao Patil Vs B D Pawar*, 1976 Mah. L. J. 841; *Suresh Dyandeo Khumkar v. State of Maharashtra*, 1987 Mah LJ 474; *Pundalik Kadhav v. District Deputy Registrar*, 1990 Mah LJ 925; *Shalikram Shivram Khobragade v. Divisional Joint Registrar, Co-Operative Societies*, (1998) 1 Mah LJ 206; *Ravindra V. Gaikwad v. State of Maharashtra*, (2002) 5 Mah LJ 464; *Sadashiv v. Hon'ble Minister for Co-Operation and Textile*, (2012) 6 Mah LJ 213; *Vinod Ghanshyam Meshram v. Minister of State, Co-Operation and Marketing Maharashtra*, (2016) 1 Mah LJ 367]

64. This principle also finds affirmation in the judgment of the Supreme Court in *Sanjay Nagayach (Supra)*, where the Apex Court emphasized that prior consultation becomes mandatory where the proposed action involves removal or ouster of a democratically elected body. The Court highlighted that such decisions must not be taken lightly and require a fair and deliberative process. Reference was also made therein to the decision in *Indian Administrative Services (SCS) Association, U.P. v. Union of India*, 1993 Supp (1) SCC 730, where the Supreme Court had explained the doctrine of “consultation” to mean a process involving a meeting of minds, exchange of views, and discussion of the material facts relevant to the decision-making process. The object of requiring such consultation is not procedural formality, but substantive participatory decision-making, so that the action taken

is not arbitrary but guided by cooperative wisdom. Thus, when the Registrar proceeds to disqualify an elected member or committee without involving the federal society, he acts in breach of a mandatory statutory precondition, rendering the order legally unsustainable.

65. In view of the foregoing discussion, this Court is of the considered opinion that the order dated 11th February 2025, passed by respondent No.1 under Section 79A(3) of the Maharashtra Cooperative Societies Act, cannot be sustained in law. The said order suffers from multiple legal defects, including:

- (i) failure to issue notice to some of the affected petitioners, in violation of natural justice;
- (ii) erroneous invocation of Section 79A(3) despite the directory nature of the Government Resolution dated 4th July 2019;
- (iii) lack of any allegation or finding of fraud or misconduct that could warrant disqualification; and
- (iv) most importantly, failure to comply with the mandatory requirement of prior consultation with the federal society.

66. Each of these grounds, independently and cumulatively, renders the impugned order liable to be set aside. The rule of law requires that penal consequences, especially those affecting elected representatives, must be preceded by fair procedure, objective satisfaction, and strict adherence to statutory safeguards. In the absence of these, the order cannot be allowed to stand.

#### **Supersession via Section 77A**

67. I now turn to the follow-up order by which the petitioners'

managing committee was superseded and an Administrator appointed under Section 77A. Having held that the disqualification was bad in law, it follows undeniably that the very basis for appointing the Administrator disappears – *cessante ratione legis cessat ipsa lex* (when the reason for a law ceases, the law itself ceases). If the committee members were not validly disqualified, there was no vacancy or failure in the committee to warrant intervention under Section 77A. On this ground alone, the supersession cannot stand.

68. Nonetheless, since arguments were addressed on the propriety of invoking Section 77A in this context, a brief discussion is merited. The scheme of Section 77A makes it clear that before passing such an order, the Registrar is ordinarily required to publish a notice on the notice board of the society's head office, so that all members, including ordinary members of the society, are informed of the proposed action and may, if they so wish, raise objections. This safeguard is essential to ensure transparency and participation, and to prevent arbitrary removal of elected committees under administrative pretexts. Section 77A, as noted, is designed to deal with situations of vacuum or impasse in a society's management, such as failure to elect a new committee, or a newly elected committee being unable to take charge, or rival claims leading to a stalemate. It is a mechanism to protect the functioning of a society when the normal governance by an elected committee is not possible. It is not meant to be a punitive provision to remove committees for wrongdoing; that role is played by Section 78 or Section 78A. The distinction is crucial because

Section 78 (and analogous provisions) provide procedural safeguards reflecting the gravity of action (e.g., requirement of inquiry under Section 83 or consultation with federal society, government approval for certain societies, etc.), whereas Section 77A is more administrative with fewer formalities (save for the public notice requirement which can even be dispensed in urgency). To use Section 77A as a shortcut for supersession is to bypass the substantive and procedural protections that would otherwise apply. Courts have frowned upon such misuse.

69. The respondents' argument that once disqualification happened, Section 77A had to step in is a post facto rationalization of their own unlawful act. One cannot create a void by an illegal order and then claim entitlement to fill it. Since I have held the disqualification illegal, the vacancy in the committee was artificially created and cannot be the basis to sustain the Administrator's appointment. Even apart from that, the manner in which Section 77A was invoked, without publishing notice to the society's members to file objections, further underscores the arbitrary approach. The Registrar's order appointing the Administrator invoked the proviso (waiving notice due to alleged urgency) but gave no convincing reason for such urgency. The immediate appointment of an outsider as Administrator, without exploring less interfering options, indicates a predetermined resolve to oust the petitioners at all costs. This fortifies the inference of malice in law (i.e. misuse of power for an improper purpose).

70. Therefore, independent of the fate of the disqualification order, the order under Section 77A appointing an Administrator cannot be justified. It was an excessive and inappropriate use of that provision.

71. On careful perusal of the said order, it becomes evident that the same has been passed without publishing any notice to the members of the society. The only justification cited by respondent No.1 for bypassing the statutory requirement of notice is the second proviso to Section 77A, which permits the Registrar to dispense with notice where he is satisfied that immediate action is necessary, or that it is not reasonably practicable to issue or publish such notice.

72. While the statute undoubtedly empowers the Registrar to act urgently in exceptional situations, the power to dispense with notice is an extraordinary and exceptional measure, not to be invoked as a matter of routine or administrative convenience. The removal or supersession of an elected managing committee is a matter of grave consequence, for the functioning of the entire society. It effectively displaces democratically elected representatives and hands over management to a non-elected Administrator. Therefore, strict compliance with procedural safeguards, particularly notice and opportunity of objection, becomes indispensable unless truly urgent and exceptional circumstances exist.

73. In the present case, no special or compelling reasons have been assigned by respondent No.1 in the impugned order for

dispensing with such publication. The reason cited, that there may be impediment in day-to-day functioning of the society, appears vague and generic, and does not satisfy the high threshold of urgency or impracticability contemplated by the second proviso to Section 77A. The invocation of such exceptional power requires the Registrar to record specific and objective reasons demonstrating why publication of notice was not possible or why immediate action was unavoidable. No such satisfaction is evident from the order under challenge.

74. It must also be kept in mind that the power under Section 77A, although administrative in form, is quasi-judicial in character insofar as it affects legal rights and positions of elected members. It is well settled that even where a statute permits departure from notice requirements in exceptional cases, such departure must be substantiated with reasons recorded in writing, and not left to subjective or blanket assumptions.

75. In light of the above discussion, this Court is of the considered view that the order dated 20th February 2025 passed under Section 77A of the Maharashtra Cooperative Societies Act is procedurally flawed, as it has been passed without affording an opportunity to the members of the society. The failure to publish notice, as required by law, and the absence of any special circumstances justifying such departure, renders the order contrary to principles of natural justice and legally unsustainable. The process leading to the appointment of an Administrator stands vitiated on this ground alone.

### Allegations of Bias and Use of Repealed Provisions

76. The final issue that requires consideration relates to the conduct of respondent No.1 in the discharge of his statutory powers under Section 79A(3) of the MCS Act. The question is whether such conduct attracts the principles laid down by the Supreme Court in *K.K. Dhawan*, (supra). In paragraph 28 of that judgment, the Supreme Court held that disciplinary action may be taken even against an officer exercising quasi-judicial functions, if he has acted in breach of legal duties, negligently, or with a view to confer undue benefit on another. Particularly relevant in the present case are clauses (iv) and (v), which state:

“(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of statutory powers;

(v) if he had acted in order to unduly favour a party.”

77. The focus of the inquiry is not the correctness of the decision per se, but the manner in which the officer discharged his duty, whether in compliance with law or in breach of it. The Court clarified that government officers are not immune from accountability, merely because their actions are cloaked with the garb of official authority or quasi-judicial discretion.

78. In the present case, respondent No.1 was granted an opportunity to respond to the allegations, and pursuant to the directions issued by this Court on 6th March 2025, he filed an affidavit dated 18th March 2025. In paragraph 13F of the said affidavit, respondent No.1 acknowledged that the petitioners had

brought to his notice binding judicial pronouncements, including *Bay Home Properties*, *Kamgar Swa Sadan CHSL*, all of which hold that the Government Resolution of 2009, issued under Section 79A(1), is recommendatory and directory in nature. He also admitted that the petitioners had submitted that there had been substantial compliance with the guidelines, and no breach justifying penal action had occurred.

**79.** Despite this, respondent No.1 attempted to justify the disqualification of managing committee members by stating that the factual circumstances of the case were different. However, this explanation does not withstand scrutiny. Once this Court has authoritatively held that the directions in the form of GR of 2009 under Section 79A are directory, failure to follow directory provisions does not attract penal consequences. Moreover, respondent No.1, in his capacity as Registrar, has no jurisdiction under Section 79A(3) to adjudicate upon the legality or propriety of resolutions passed by the general body of a cooperative society. That jurisdiction, if at all, lies under Section 91 of the MCS Act, wherein disputes regarding general body resolutions may be adjudicated by the Cooperative Court.

**80.** It is undisputed that the decision to appoint the developer was taken by the general body of the society. Therefore, under the guise of Section 79A(3), respondent No.1 could not have interfered with that collective decision or penalised elected members for implementing it.

**81.** Despite specific opportunity given by this Court to explain the basis of his decision, respondent No.1 failed to offer a satisfactory justification for his action. Instead, he relied upon paragraph 19 of his reply affidavit to state that the managing committee had violated redevelopment guidelines. However, the reasoning given is general and does not explain how such findings were arrived at, nor does it show what material was relied upon in arriving at that conclusion.

**82.** On 27th March 2025, this Court called upon respondent No.1 to file an additional affidavit, specifically requiring him to disclose the source of information upon which he had relied to make the factual assertions in paragraph 19 of his earlier affidavit. Even in the subsequent affidavit, respondent No.1 failed to disclose any documentary material or specific source that could support the findings recorded. Such failure assumes significance when the conclusions sought to be drawn have led to civil consequences of disqualification for a period of six years against elected members.

**83.** It is well settled that factual findings which form the basis of statutory action must be founded upon credible material. Mere assertions or vague references to procedural lapses do not constitute sufficient basis for exercising quasi-judicial powers. In the present case, no documentary evidence was placed on record by the complainants or respondent No.1 to establish that the redevelopment process involved any misconduct warranting disqualification. Therefore, the findings recorded in the impugned order appear to be based on extraneous considerations, and not on material which can withstand judicial scrutiny.

**84. Ignoring Binding Precedent – Omission of Duty and Legal Mala Fides:** Respondent No.1's order is also vitiated by his failure to follow binding legal precedent. The judgments of this Court in *Maya Developers* and *Kamgar Swa Sadan* clearly lay down that the Government Resolution 2009 is directory and not mandatory in nature. Non-compliance with the GR may attract other consequences or require corrective measures, but it is not a ground for automatic removal of committee members. The GR dated 4th July 2019 cannot be viewed as effecting any material deviation from the scheme and spirit of the 2009 GR. A comparative reading of the two resolutions reveals that the language, structure, and underlying objectives remain broadly consistent. Both GRs emphasise due diligence, transparency, and member participation. There is no indication in the 2019 GR to suggest that non-compliance with any of its clauses would by itself attract penal consequences such as disqualification or removal of office bearers. These rulings were directly on point, as the facts involved disqualification of managing committee members under Section 79A(3) for alleged non-compliance of the similar GR. It was the duty of respondent No.1, as an authority under the Act, to be apprised of and adhere to the law declared by this Court. This omission to consider the prevailing law is another facet of negligence and dereliction of duty encompassed by *Dhawan* ground (iv). In effect, respondent No.1 omitted a prescribed condition essential for fair exercise of power, the condition being that his decision must align with the law as interpreted by the High Court. If the omission was willful, it is even more egregious,

suggesting a “conscious violation of law to the prejudice of another”, which the Supreme Court has identified as a hallmark of malice in law.

**85. Violation of Principles of Natural Justice and Fair Play:** The record, paragraph No. 19 of affidavit in reply dated 18th March 2025, lends credence to the petitioners’ complaint that respondent No.1 considered materials that were not part of the official record of inquiry. If that is so, the decision was based on “extraneous” information, which appears not to be part of record of respondent no. 1 . This offends the basic principles of natural justice and reinforces the impression that respondent No.1 was influenced by factors outside the legitimate scope of the inquiry. Such conduct violates the dictum in *A.K. Kraipak v. Union of India* (1969) 2 SCC 262 that even administrative decisions must be made fairly, impartially, and on relevant evidence. The Supreme Court’s warning that “the instrumentalities of the State must discharge their functions in a fair and just manner” was unfortunately not heeded by respondent No.1. An adjudicator’s duty to act fairly is the cornerstone of the rule of law, and any deviation from it results in arbitrariness. By acting on material behind the back of one party, respondent No.1 tilted the playing field, a clear indicator of bias. In this regard, the *Kraipak* principle of *nemo iudex in causa sua* (no person shall be a judge in his own cause) also comes into play. While respondent No.1 was not personally interested in the matter, the effect of his procedure was that he became a judge on the basis of his own private knowledge (or perhaps the one-sided inputs from the complainant group), rather than on the evidence

presented through a fair process. This vitiates the decision-making process entirely.

**86. Undue Favouritism – Evidence of Bias to Favour a Party:** The cumulative effect of respondent No.1's actions leads to the conclusion that he acted in a manner to unduly benefit one side of the dispute at the cost of the other. The complainant group, which presumably had grievances about the petitioners' approach to redevelopment, achieved through the Deputy Registrar's order what they could not through the ordinary democratic process of the society's election or through a proper legal process: the *summary removal of the petitioners*. The sequence of events suggests a premeditated outcome. Clause (v) of *K.K. Dhawan* specifically contemplates disciplinary action where an officer has "acted in order to unduly favour a party". Even absent direct evidence of bribery or corruption, if the pattern of conduct shows a tilted balance or preferential treatment without justification, the charge of undue favouritism can be made out. In the present case, respondent No.1's departure from the norm, all operated to the sole advantage of the complainant faction. This "colourable" exercise of power, using a legitimate power for an illegitimate end, is nothing but undue favouritism in action. As the Supreme Court observed in *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471, the Court will be "*undeceived by illusion*" and will not hesitate to strike down an act where "the true object is to reach an end different from the one for which the power is entrusted". Here, the power under Section 79A(3) (entrusted to ensure good governance of societies) was apparently used to achieve the end of

appealing a particular group and ousting the petitioners (elected managing committee members), a purpose alien to the Act.

**87.** It is also apposite to recall the Supreme Court's elucidation of "malice in law" from *Kalabharati Advertising v. Hemant Vimalnath Narichania*, (2010) 9 SCC 437, if a public authority acts with an intention not authorized by law, or consciously disregards legal limits, the element of malice in law is attracted even if there is no overt malice in fact. The Supreme Court reiterated that legal malice (malice in law) occurs when an act is done without lawful excuse or for an improper purpose. I find that element present, respondent No.1's improper purpose being to hasten the removal of petitioners contrary to law. Conscious disregard of law to the detriment of elected managing committee members, as seen here, is exactly what *Kalabharati* cautions against. Respondent No.1's conduct, as discussed, fulfills all essentials of malice in law. It shows a "depraved disregard" for the petitioners' rights and for the constraints of law. That an authority would sidestep a binding precedent cannot be seen as a good-faith mistake; it reflects either an unacceptable level of incompetence or a willful abuse of power. Both alternatives are equally condemnable for a quasi-judicial officer.

**88.** What followed, however, raises grave legal concern. Respondent No.1 issued show-cause notices and, in a span of weeks, proceeded to disqualify the petitioners for a period of six years, invoking breach of the 2019 redevelopment guidelines. While doing so, it is undisputed that respondent No.1 was specifically made aware of the above binding precedents (*Maya*

*Developers and Kamgar Swa Sadan*), which held that the Government Resolution of 2009 is directory and not mandatory in nature. Yet, there is no discussion or application of that judgment in the impugned order. The reasoning offered is wholly mechanical and bereft of reference to the legal position settled by this Court. Further, immediately after passing the disqualification order, respondent No.1 proceeded to appoint an Administrator over the society under Section 77A. This was done without issuing prior notice to the petitioners nos. 1 to 3.

**89.** What compounds the impropriety is the subsequent order dated 20 February 2025 passed by respondent No.1, whereby an Administrator was appointed under Section 77A(1)(b) of the Act. As per the settled legal position, any action resulting in supersession or removal of an elected managing committee must be preceded by publishing due notice . In the present case, it is not disputed that no prior notice was published before passing the said order. The appointment of the Administrator was communicated only post facto, and in fact, the members of society learnt of the same when respondent No.2 arrived at the society premises seeking to take charge.

**90.** At the heart of the cooperative movement lies the principle of democratic self-governance. The statutory scheme of the MCS Act also mandates that departures from democratic functioning, such as supersession of elected bodies or appointment of administrators, must be undertaken only in strict compliance with procedural safeguards and legal standards. In the case on hand, there is material on record which indicates that the respondent

No.1 invoked powers under Section 79A(3) to disqualify the committee and simultaneously passed an order under Section 77A to appoint an Administrator. However, such invocation of power suffers from procedural impropriety and lack of adherence to the principles of natural justice. Neither was any notice served upon the petitioners nos. 1 to 3, nor was any opportunity of hearing granted before such drastic steps were taken. This vitiates the entire decision-making process.

**91.** It is equally trite that an order under Section 77A cannot be passed in a mechanical manner. Such appointment of an Administrator can only be resorted to upon fulfillment of jurisdictional facts. In the present case, respondent No.1 not demonstrated that there existed any urgency warranting departure from the settled legal process. The absence of notice, coupled with the absence of any objective material indicating emergent circumstances, leads to a legitimate inference that the actions taken by respondent No.1 were not only ultra vires the statutory scheme but also tainted by arbitrariness and colourable exercise of power. The rule of law mandates that public authorities must act with transparency, fairness, and fidelity to statutory norms. When statutory functionaries deviate from these core principles and act with haste or bias, it undermines not only the integrity of the process but also the trust reposed in them by the cooperative community.

**92.** Clause (v) of the said judgment is also attracted. The manner and timing of respondent No.1's actions, disqualifying the petitioners and appointing an Administrator without publishing

notice, and in apparent coordination with a group of complainants, suggests that the statutory powers were used not to uphold legality, but to favour a rival faction in the society. The result was to remove the elected committee and hand over control to an outside administrator in complete disregard of procedural safeguards. This reflects undue favour and colourable exercise of power, as warned against in *Gurdial Singh (Supra)*.

93. In the conspectus of the facts presented before this Court, it becomes evident that respondent No.1, while purporting to act within the confines of Sections 79A(3) and 77A of the MCS Act, has in fact circumvented the statutory procedure laid down under Section 78 for supersession of an elected managing committee. The records disclose that respondent No.1 first purported to disqualify the members of the managing committee under the guise of non-compliance with redevelopment guidelines issued under Section 79A(1), and, without any independent or intervening cause, proceeded to appoint an Administrator under Section 77A. This sequence of actions, when holistically considered, leaves little room for doubt that the Registrar, in substance if not in form, accomplished the same result that could only have been achieved through a valid invocation of powers under Section 78, namely, the removal or supersession of an elected committee on the ground of mismanagement. However, what is statutorily required under Section 78 is not a mere declaration or assertion of non-compliance, but the fulfillment of procedural safeguards, including issuance of show cause notice, grant of reasonable opportunity of hearing, recording of findings

as to mismanagement, and an express order of supersession. The action of respondent No.1 thus amounts to a colourable exercise of power, a legal concept deeply embedded in Indian constitutional jurisprudence. The law is well-settled that what cannot be done directly cannot be permitted to be done indirectly. When power is exercised ostensibly for a purpose but the real object is something else, such exercise is liable to be struck down as colourable.

94. In *K.C. Gajapati Narayan Deo v. State of Orissa*, AIR 1953 SC 375, the Constitution Bench explained the doctrine of colourable legislation in the following terms:

*“If the Constitution of a State distributes the legislative sphere amongst different authorities, questions do arise as to whether any particular enactment is within the competence of the legislature which passed it. Such questions are to be decided by applying the test of pith and substance... But fraud on the Constitution may also arise where the legislature or executive purports to act within its power but uses its power for a collateral or extraneous purpose.”*

95. Though the context in the above authorities pertained to legislative power, the same principles apply with greater force to administrative and quasi-judicial actions of statutory authorities. In the instant case, respondent No.1, by misapplying Section 79A(3) as a tool of disqualification and following it up with an order under Section 77A, effectively achieved the replacing of a duly elected body. Such a course of action, in the considered opinion of this Court, falls afoul of the doctrine of colourable exercise and is

impermissible in law.

96. It must also be borne in mind that Section 77A is not an alternative to Section 78. The legislative intent behind Section 77A is to enable the Registrar to fill a vacuum caused by failure of election, resignation, or inability of a committee to function, and not as a punitive measure against alleged mismanagement. Appointment of an Administrator must be resorted to only in situations where democratic governance is rendered impossible due to factual exigencies, and not to short-circuit the discipline of Sections 78 or 78A.

97. Even assuming, for the sake of argument, that there was material available to justify scrutiny of the committee's conduct, the lawful course would have been to invoke Section 78, after complying with the procedural safeguards embedded therein. The choice of a seemingly “easier” route under Section 79A(3) and Section 77A, bereft of the rigor and protection of due process, reveals not mere technical infirmity but a substantive deviation from the statutory mandate. Such deviation cannot be countenanced by a Court of law bound to uphold the rule of law and procedural fairness.

98. In view of the above, this Court holds that the impugned orders suffer from legal mala fides, are vitiated by non-compliance with principles of natural justice, and amount to a colourable and excessive exercise of statutory powers. The cumulative effect of this conduct, when examined in light of the principles laid down by the Supreme Court in *K.K. Dhawan*, (Supra) clearly discloses

abuse of power attracting disciplinary consequences, particularly clauses (iv) and (v) thereof.

**99.** To avoid the risk of being misunderstood, the Court clarifies that Section 79A of the MCS Act and the Government Resolution dated 4 July 2019 do impose obligations aimed at protecting the welfare of cooperative societies. The 2019 GR provides a framework to ensure transparency and fairness in redevelopment projects (for example, requirements of competitive bidding, general body approvals, etc.). Authorities like respondent No.1 are expected to enforce such directives in letter and spirit. However, enforcement must be carried out within the four corners of the law, following proper procedure, and without ulterior motives. The Government Resolution itself does not sanction peremptory disqualification; as noted, non-compliance with its provisions is not penal by automatic removal of the committee. By jumping to the most extreme step (disqualification and supersession) in the teeth of contrary directives in the form of binding precedent, respondent No.1 transgressed the ambit of his lawful powers. In doing so, he breached the duty of reasonable, unbiased decision-making that the Act demands of him.

**100.** Viewed in its entirety, the material placed before this Court reveals a troubling pattern. Respondent No.1 chose to ignore multiple binding precedents of this Court, failed to disclose the basis of adverse factual conclusions, and proceeded to pass orders with serious civil consequences, disqualifying elected office bearers for six years, without adhering to minimum procedural fairness.

**101.** Such actions, if permitted to continue without proper judicial scrutiny, may cause serious harm to the purposes of the cooperative movement. When statutory authorities interfere with the functioning of duly elected Managing Committees without following due process or without sufficient legal basis, it not only weakens the democratic foundation of cooperative societies but also creates an atmosphere of fear and uncertainty among office bearers and members. The very spirit of cooperative governance lies in the principle of democratic decision-making and collective management by members. If elected committees can be removed or destabilised on vague or insubstantial grounds, it would amount to indirect interference in the choice of the members who have exercised their statutory right to elect their representatives. Such interference cannot be allowed unless it is clearly supported by law and necessary to prevent actual and proven mismanagement or misconduct.

**102.** Further, there is a grave risk that arbitrary actions of this nature may encourage undesirable practices, including possible nexus between vested private interests and certain regulatory officers. This may result in manipulation of redevelopment projects or society affairs for personal or commercial gain, in disregard of the welfare of the society members. The very object and scheme of the MCS Act which is to promote transparency, accountability, and self-governance among cooperative societies, stands defeated if statutory powers are exercised to undermine duly elected bodies rather than to support and guide them.

**103.** Having regard to the factual matrix, the governing statutory framework, and the binding judicial pronouncements, this Court concludes that the impugned orders passed by respondent No.1 are not only illegal but also amount to a willful abuse of statutory powers. They stand vitiated for the following reasons:

- (a) Violation of binding precedents, wherein the redevelopment GR was held to be directory.
- (b) Breach of natural justice in appointing Administrator under Section 77A without publishing notice.
- (c) Disregard of binding Supreme Court directions in *Sanjay Nagayach*.
- (d) Colourable exercise of power falling within clauses (iv) and (v) of paragraph 28 of *K.K. Dhawan*.
- (e) Misuse of office to favour a particular faction, undermining democratic rights of elected representatives.

**104.** In view of the detailed discussion and findings recorded hereinabove, this Court is satisfied that the impugned action taken by respondent No.1 suffers from serious legal and procedural infirmities, and hence, interference in writ jurisdiction is warranted. To ensure fairness, transparency, and accountability in the functioning of statutory authorities, this Court considers it appropriate to issue the following directions.

- (i) Accordingly, the impugned order dated 11th February 2025, passed by respondent No.1 in exercise of powers under Section 79A(3) of the Maharashtra Cooperative Societies Act, 1960, disqualifying the petitioners from continuing as managing committee members, as well as the order dated 20th February 2025, passed under Section 77A of the said Act appointing an Administrator, are both

quashed and set aside.

(ii) Having regard to the material on record and the manner in which respondent No.1 has proceeded, by ignoring binding precedents, relying on unverified factual inferences, and passing orders in breach of natural justice, this Court directs the Principal Secretary (Co-operation), Government of Maharashtra, to appoint a senior officer of appropriate rank and integrity to conduct a comprehensive and impartial inquiry into the role and conduct of respondent No.1 in relation to the subject matter of the present writ petition.

(iii) The said inquiry shall be conducted in accordance with law and completed expeditiously, and in any case, within a period of eight weeks from the date of pronouncement of this judgment.

(iv) Upon conclusion of the inquiry, a detailed compliance report setting out the findings and action taken, if any, shall be filed before this Court within the aforesaid time frame.

(v) The parties shall be at liberty to apply for further directions, including appropriate consequential reliefs, in the event of non-compliance with the directions issued herein, or after the filing of the compliance report.

(vi) Let this writ petition be placed for compliance and further directions on 25<sup>th</sup> August 2025.

**105.** Rule is made absolute in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

**106.** At this stage, learned AGP requested to stay the operation of this judgment. However, considering the reasons assigned, the request for stay is rejected.

**(AMIT BORKAR, J.)**