

EXECUTIVE SUMMARY

On the basis of various Judgments rendered by Hon'ble High Court of Gujarat and to remove the lacuna pointed out and also on the basis of suggestions made by the Advocates practicing before the Registrar of Co-operative Societies / Board of Nominees / Gujarat State Co-operative Tribunal, the suggestions / recommendations are made for suitable amendments in The Gujarat Co-operative Societies Act, 1961 ("the Act") and the Rules framed thereunder for rendering just equitable justice.

In nutshell, it is to be stated that:—

- (i) By Judgment rendered in the case of **Rasiklal Patel & Ors. v/s. Kailasgauri Ramanlal Mehta & Ors. [1971 GLR 355]**, the Hon'ble High Court of Gujarat held that Clauses (c), (d) & (e) and the words "any past or present agent" and "deceased agent" in Clause (a) of Section 96(1) along with Explanation II are ultra vires and void as offending Article 14. For empowering the parties who are affected by grant of loan or for deposits with the society or lending by the society, specific provisions are required to be made so that the dispute can be resolved by the procedure prescribed under Section 96. For that purpose, suitable suggestions are made for amending Section 96 of the Act which are discussed in Chapter: I of this Report.

(ii) By Judgment rendered in the case of **Federation of Kheda District Co-operative Credit Societies Ltd. & Ors. v/s. State of Gujarat & Ors.**, [Special Civil Application (SCA) No.20104/2006 with SCA No.20105-20116/2006], the Hon'ble High Court of Gujarat set aside the Circulars dated 23.01.2004 and 04.11.2004 issued by the Registrar of Co-operative Societies, Gujarat State, by holding that the powers of the liquidator to determine the order of priority are not only qua the different class of creditors, but also within the same class of creditors *inter se* and the Court held that priorities prescribed by the said Circulars are null and void, as they are contrary to Section 110(e) of the Act. Hence, it is suggested to amend Section 110(e) and also to add Section 110 A, prescribing priority for disbursement of assets of the society under liquidation.

(iii) At present, a number of new housing societies are constituted. Apart from it, before constructing houses, the builders collect money from the persons who are interested in purchasing building / flat / office / shop, etc. and, thereafter, various disputes arise. For codifying the rights of the purchasers of such premises and the duties of the contractor / builder / promoter, "Special Provisions for Housing Societies" are suggested by adding Chapter X-C, in the Act. The said provisions are discussed in Chapter: II of this Report.

- (iv) Further, for better redevelopment of the society, no provisions are in existence in the Rules, at present. Therefore, for solving number of problems / disputes faced by the societies as well as their members, Chapter IV-A “Management and Redevelopment of Housing Society” is suggested for adding it in the Rules. The said Chapter is discussed in Chapter: V of this Report.
- (v) Many of the times, parties to the proceedings do not comply with and/or disrespect the orders of Board of Nominees and/or Co-operative Appellate Tribunal. For compliance, Section 149 A is suggested to be added, after Section 149. The said suggested Section is similar to Section 148 A of The Maharashtra Co-operative Societies Act, 1960. The suggested Section 149 A is discussed in Chapter: III of this Report.
- (vi) In addition, suggestions are made for relevant amendments in various Sections of the Act, such as, Sections 17, 22, 44, 45, 46, etc. for the reasons, as discussed in Chapter: I of this Report.
- (a) Section 17 deals with amalgamation, transfer, division or conversion of societies. Sub-Section 1A is suggested by providing that resolution passed in a special general meeting shall be binding to all the members of the society so that further dispute can be avoided.
- (b) Amendment in Section 22 is on the basis of the Judgments rendered by the High Court in the cases of Jain Merchants Co-Op. Housing Society & Ors. v/s. HUF of Manubhai Kalyanbhai Shah & Ors. [1995 (1) GLR 19] and Abhinav Co-Op. Housing Society Ltd. v/s. Pankajkumar Babulal Doshi [2002 (2) GLR 1768]. The said Judgments *inter-alia* provide that HUF and Trust could be member of the society.

- (c)** Suggestions for amending Sections 44, 45 and 46 are in conformity with the Judgment rendered by the High Court in the case of **Rasiklal Patel & Ors. (Supra)**.
- (d)** For adding Sub-Section (5) in Section 74C, suggestion is made to empower the voter to cast a negative vote i.e. “NOTA – None of The Above” against the voting column by placing a symbol “**(O) – Zero**”. This suggestion is in conformity with the Judgment dated 27.09.2013 rendered by the Apex Court in the case of **People’s Union for Civil Liberties & Anr. v/s. Union of India & Anr. [Writ Petition (C) No.161/2004]**. On that basis, Election Commission of India has also issued a letter No.51/8/NOTA/2013-EMS, dated 30.10.2013.
- (e)** Amendment in Section 78 is suggested so that special general meeting can be called within reasonable time.
- (f)** Amendment in Clause (b) of Section 99(5) is suggested by adding the word “unconditionally”, since there is no specific provision for granting unconditional leave and on occasions, the Registrar is finding difficult to grant unconditional leave to defend.
- (g)** Sub-Section (4) in Section 100 is suggested for addition, since there is no specific power to the Board of Nominees/Registrar/authorized person to pass interlocutory orders.

- (h)** It is observed that a number of Petitions are filed before the Hon'ble High Court, pending election on the ground that patent illegalities are committed during the election process. For clarifying the situation, specific provision is suggested by adding proviso to Sub-Section (2) of Section 145 U. Further, Clause (e) in Sub-Section (3) of Section 145 U is also suggested for addition, by making it clear that no stay would be granted, pending election.
- (i)** Finally, amendment is suggested in Section 153 which provides for appeal.

In addition, suggestions are also made for relevant amendments in Rules 40-A, 43 and 78 of the Rules, for the reasons, as discussed in Chapter: IV of this Report.

For proper codification of the rights of the members of the society and of the society as well as that of builders, the Act and the Rules are required to be amended, as suggested and recommended in this Report.

Finally, it is to be stated that before preparing this Report, exhaustive consultation is made with Mr. Hitendra Ramanlal Shah, President of the Gujarat Co-operative Bar Association. The Commission expresses gratitude and records the appreciation for valuable services rendered by Mr. Hitendra R. Shah.

Date : March, 2015

Place : Ahmedabad

JUSTICE M. B. SHAH
Former Judge, Supreme Court of India
AND
Chairman, Gujarat State Law Commission