NOMINEE,
A STOP-GAP
MEMBER IN
HOUSING SOCIETY

Alias

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नामनिर्देशित व्यक्ती—

औट घटकेचा सभासद

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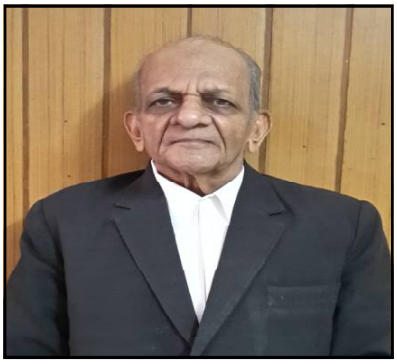

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1. INTRODUCTION: All classes of Co-operative Societies including the Housing Co-operative Societies in the State of Maharashtra were governed by an umbrella law, called the Maharashtra Co-operative Societies Act, 1960.

2. Even though the affairs of the co-operative housing societies are distinct and peculiar; till October 30, 2018**,** they were regulated in the same manner as per the general provisions of the said Act, 1960 as applicable for all classes of co-operative societies, such as Co-operative Sugar Factories, District Central Co-operative Banks, Co-operative Spinning Mills, etc. The uniform application of the provisions of the said Act, 1960 despite the peculiarities of the co-operative housing societies, created problems leading to a large number of disputes and litigations, which were further fuelled by clumsy bye-laws and non-clarification from time to time by the Co-operative Department.

3. Federations of Housing Societies in the State and many Activists had persistently represented to the State Government for decades to de-link the Co-operative Housing Society rules and frame a separate enactment governing exclusively Co-operative Housing Societies, so as to avoid confusion and reduce litigation by giving timely clarifications on matters of dispute or potential disputes.

Finally, the Maharashtra State has promulgated an Ordinance no. XXV amending the Maharashtra Co-operative Societies Act, 1960 which has come into force on 30th October 2018, whereby a new Chapter XIII-B has been inserted in the said Act.1960 dealing exclusively with the Co-operative Housing Societies.

4. New Definition of a "Member": The purpose of this article is not to deal with all the new provisions introduced by the Ordinance no. xxv dated 30-10-2018, but mainly to deal with the provisions relating to admission of persons as

Members, and the Definition of "Member" in terms of newly inserted Section 154B-1, sub-section (18) thereof, which reads:

(18) **"Member"** means a person joining in an application for the registration of a housing society which is subsequently registered, or a person duly admitted to Membership of a society after its registration and includes associate or joint or provisional Member;

(a) **"Associate Member"** means a person duly admitted to Membership of a housing society on written recommendation of a Member to exercise his rights and duties with his written prior consent and whose name does not stand in the share certificate;

(b) **"Joint Member"** means a person joining in an application for the registration of a housing society jointly, which is subsequently registered or a person who is duly admitted to Membership after its registration and who holds share, right, title and interest in the flat jointly but whose name does not stand first in the share certificate ;

(c) **"provisional Member"** means a person who is duly admitted as a Member of a society temporarily after death of a Member on the basis of nomination till the admission of legal heir or heirs as the Member of the society in place of deceased Member

5. The Amended law is a welcome step as it ushers in clarity and for the first time, defines and distinguishes the concept of a "Joint Member" and an "Associate member", with reference to the share in the ownership of property of the Society. There was a good deal of confusion and misunderstanding as some societies were treating these terms as interchangeable. In legal sense, a Joint owner is a person who has made some contribution in the Purchase of a Flat in a building owned by the Society, which is in occupation of the Member; whereas an Associate Member, in pith and substance, was a category of Member injected to carry out certain functions on behalf of a member like representing the Member & Voting at the meeting; as the co-operative law did not recognize "proxy system" widely prevalent in the joint stock companies for decades.

6. In the context of the definition of a "Provisional Member", and the onerous responsibility saddled on him under the amended Maharashtra Co-operative Societies Act, 1960 effective 30th October 2018, one must look at the law prevalent on that date and the controversy on the pivotal issue: "whether the Nominee, appointed under the procedure established by law, be it a Banking Law or Post Office Rules or the Companies Act, 2013 or any other law for the time being prescribing the procedure of nomination, who is entitled to receive the bank deposits, or small savings deposits or the Company shares in the event of the death of the person, is to be regarded as "the Nominee-collector" or "the Nominee-beneficiary"?

7. The controversy surrounding the Nominee was the subject matter of judicial scrutiny in a number of cases before the Hon'ble Apex Court.

8. In my booklet titled: "Joint property" or "property held in joint names", published in April 2016, I have had examined in depth the concept whether the "nomination procedure" is a third stream of transmission of property on the death of a person (the other two being: (i) Testamentary succession and (ii) intestate succession, that is where the person dies without making a Will & Last Testament). I had concluded that it all depends on the law governing the Nomination rules and procedure.

9. The Honourable Supreme Court had discussed this matter at length in the case Indrani Wahi vs. Registrar of Coop. Societies & Ors, (Division Bench Judgment dated 10th March 2016) wherein it had been held that once there is a valid nomination with the society, the society is bound to transfer the share or interest of the deceased member in a cooperative society, **to such nominee alone.**

10. A few observations, findings and conclusions from Indrani Wahi case were referred to in my Booklet:

Quote:

"There were two vital issues involved:

(a) The objection of the brother of Indrani was that on marriage she did not remain a member of "the family" & so the Nomination was invalid,

(b) The Division Bench of the Kolkata High Court had on Appeal preferred by her mother and brother, held that shares and interest can only be transferred by expressing consent of all the heirs. The Honourable High Court had, inter alia, held:

"We do not propose to hold that the writ petitioner, in whose favour nomination has been made, shall not be made a member of the said society and having regard to the legislature intent contained in sub-section (4) of Section 69 it may not be possible for us to direct the appellants to be joint members along with the writ petitioner, but to protect the interest of the appellants in the flat which they have inherited, it is necessary for the said Society to record their interest expressly in the share Certificate as well as in its records pertaining to members and, in particular in the register of members so that one of the joint owners merely because of the nomination in her favour cannot transfer either the share, in which she has a part interest, or the allotment, where also she has a part interest, for the same is expressly declared to be transferable and, accordingly, can only be transferred by expressing consent of all the heirs. With the above we dispose of the appeal without, however, any order as to costs."

(Underlining supplied)

- The aforesaid conclusion & direction to the Society, to add in the share certificate expressly the interest of the mother/brother (without adding their names as "joint members"), was to ensure that the nominee, one of the joint owners, cannot transfer either the share in which she has part interest or the allotment, without the "consent of all heirs".

UQUOTE:

- The Honourable Supreme Court, on appeal, vacated that direction and asked the Society to transfer the share / interest in the name of the nominee **and de-linked the succession, inheritance issue to be agitated separately.**

11. In this context, reference is made to the last paragraph in my Booklet, which reads: Quote:

"36. In Conclusion:

(i) Looking to the true legal meaning & purport of the "Joint Ownership" of the estate, movable or immovable, one thing appears clear that the person must bear in mind the consequences that flow from the concept of "joint tenants" and "tenants-in-common". In the case of "joint tenants" the property automatically goes to the other owner/s if one dies; whereas in the case of "tenants-in-common" it is not automatic.

(ii) The rule of English law is to presume that a transfer to a plurality of persons creates a "joint tenancy" unless there are words of severance. The law in India is different. It has always been held in this country that where there is a transfer to two or more persons, they must be presumed to take as "tenants-in-common" unless there are clear words conveying a contrary intention.

(iii) The discussion hereinabove would make it abundantly clear that it is important to file "nomination" forms, in all cases, to protect the interest in the property even when the Deposit or other Accounts are in "joint names", and even with "E or S" mandate; and make a Will based on such nomination and declare unequivocally in the Will that the person in whose favour a Nomination has been filed would be the exclusive owner of that particular property, with all rights to hold, enjoy or dispose of the property at the sole discretion of such person; and no one else shall have any right, title or interest therein whatsoever.

(iv) A nomination in respect of each property coupled with the relative will in favour of the nominee would avoid complications and may perhaps render the property litigation–free; whether the Kokate case is endorsed or overruled by a superior Court in the years ahead."

- In fact, the Division Bench of the Bombay High Court has, in Shakti Yezdani And Anr vs. Jayanand Jayant Salgonkar decided on 1st December, 2016, held:

> **"**35. Considering the consistent view taken by the Apex Court while interpreting the provisions relating to nominations under various Statutes (including the view in the recent decision in the case of Indrani Wahi), there is no reason to make a departure from the consistent view. The provisions of the Companies Act including Sections 109A and 109B, in the light of the object of the said Enactment, do not warrant any such departure. The so called vesting under Section 109A does not create a third mode of succession. It is not intended to create a third mode of succession. The Companies Act has nothing to do with the law of succession. We have gone through every decision and material relied upon by the Appellants to which we have not made a specific reference in this Judgment. We hold that there was no reason to take a view which is contrary to the view taken in the long line of the decisions of the Apex Court on interpretation of provisions regarding nominations. Hence, the view taken in Kokate's case is not correct. We answer the first question in the negative and the third question in the affirmative. The second question is answered accordingly".

12. With due respect, the decision of the Honourable Bombay High Court needs re-consideration in the light of the provisions of section 72 of the Companies Act, 2013, which is the law made by the Parliament, which, in unequivocal terms says that the valid nomination would override testamentary or any other disposition.

Companies Act, 2013

72. Power to nominate.

1. Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

2. Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

3. Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities,

of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

4. Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

Unquote:

13. PRE-AMENDMENT CO-OPERTIVE LAW: The Maharashtra Co-operative Societies Act, 1960 as amended by Maharashtra (Amendment) Act, 2013 effective 14th February 2013 clearly provided for the transfer of share or interest of the deceased Member to the person nominated as per the rules. Section 30 of the said Act, 1960 reads:

30. Transfer of interest on death of member. - (1) On the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the rules, or, if no person has been so nominated to such person as may appear to the committee to be the heir or legal representative of the deceased member:

Provided that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society:

Provided further that, nothing in this sub-section or in section 22 shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society.

(2) Notwithstanding anything contained in sub-section (1), any such nominee, heir or legal representative, as the case may be, may require the society to pay to him the value of the share or interest of the deceased member, ascertained in accordance with the rules.

(3) A society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(4) All transfers and payments duly made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

- Sub-section (4) of section 30 gave enough protection to the Housing Society against any demand or claim, by any other person, that is, any person other than the Nominee. Therefore, whether the Nominee was merely a hand to “collect” or “beneficiary” of the share or interest was a matter to be sorted out by the legal heirs or any other claimants. Moreover, the Housing Society was taking an Indemnity

Bond on a Stamp Paper of Rs. 500/- which was a complete protection to the Society.

14. Further, around the same time in 2013, the Parliament had passed the Companies Act, 2013, that also provided for **"Power to Nominate"** and the Nominee of shares and securities was placed on a higher pedestal, as is evident from section 72(3) of the Companies Act,2013 , which , inter alia, uses unequivocal and categorical expressions, reproduced below, suggesting that "vesting" of shares in the Nominee was not mere "possessory right" but unquestionably "ownership rights" to the exclusion of all other persons.

Analysis sub-section (3) f Section 72 demonstrates:

- Notwithstanding anything contained in any other law for the time being in force or
- in any disposition, whether testamentary or otherwise,
- in respect of the securities of a company,
- where a nomination ...purports to confer on any **person the right to vest the securities of the company,**
- **the nominee shall, on the death of the holder of securities or,** as the case may be, on the death of the joint holders**, become entitled to all the rights** in the securities,
- **to the exclusion of all other persons**, unless the nomination is varied or cancelled in the prescribed manner.

The phraseology used is both affirmative and negative and it emphatically says "**the nominee shall be entitled to "all rights**". On the face of this law, it is rather difficult to appreciate the theory of Nominee being merely "a collecting-hand".

Therefore, notwithstanding the opinion expressed by the Division Bench of the Honourable High Court, in Shakti Yezdani's case, the Companies Act, 2013, section 72 therein, shall stand unaffected and would prove that the Nominee is not always a mere custodian, and can be the owner as well; and even if it is assumed that he is merely a "collecting –hand" in terms of the Honourable Bombay High Court decision, the Will of the deceased person could clothe the Nominee with all the rights of ownership to the exclusion of any person including any legal heir or anyone having beneficial interest in the property.

15. BURDEN ON THE NOMINEE TO PROVE OWNERSHIP RIGHTS: At this stage it is necessary to see the new provisions of the Maharashtra Ordinance no. xxv of 2018, effective 30th October 2018, where-under the following two new Sections are inserted in the Maharashtra Co-operative Societies Act, 1960:

Quote:

"**154B-12.** A Member may transfer his share, right, title and interest of his property in the society by way of registered document by following the due procedure as provided in the rules or bye-laws.

154B-13. On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of testamentary documents or succession certificate or legal heir-ship certificate or document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member or **to a person duly nominated in accordance with the rules:**

Provided that, **society shall admit nominee as a provisional Member** after the death of a Member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession Act or under will or testamentary document are admitted as Member in place of such deceased Member:

Provided further that, if no person has been so nominated, society shall admit such person as provisional Member as may appear to the Committee to be the heir or legal representative of the deceased Member in the manner as may be prescribed".

UNQUOTE

16. NOMINEE TO PROVE RIGHTS TO INHEIRT PROPERTY: On a true and proper interpretation of the aforesaid two sections, it appears that the entire thrust of the scheme unveiled reveals that the Society has a statutory obligation to admit as Members only those persons, who are able to prove their legal rights to hold the property, through the title deeds, when the property is purchased by the original member, and subsequently, when the share or interest in the capital of the society is transferred to the nominee, who proves that he is the legal heir under any of the following title/ownership documents:

(i) On the basis of testamentary documents, or

(ii) Succession certificate, or

(iii) Legal heir-ship certificate, or

(iv) Document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member

17. UNWARRANTED SADDLING OF COSTS: If a Nominee has to produce any of the listed documents at (i) to (iv) above, it would amount to saddling the Nominee with huge burden of expenditure, apart from going from pillar to post and wasting time & energy.

• **First,** one fails to understand, why the Society is given the Licence for peeping into the "private life" of a deceased Member by asking the Nominee to file "Testamentary documents" like Will of the deceased-Member, which has all the financial details of the property-holdings and inter-personal equations amongst the members of the family.

• **Secondly,** the Will document alone has no use, unless a Probate or letters of administration are obtained. For getting the Probate, the Stamp Duty itself would be Rs. 75,000 looking to the Market Value of a house property in the large Towns in the State; then Advocate would have to be engaged for a high fees, and other charges incurred, apart from about six months' minimum time required to get the document.

It may be added that the probated Will may at the most mention that the Nominee is the legatee, **but the title of the property itself may not stand proved**, because the Honourable Supreme Court has held in the case of Mrs. Hem Nolini Judah (Since ... vs. Mrs. Isolyne Sarojbashini, decided on 16th February, 1962 : 1962 AIR 1471, held:

"Now it is not in dispute that, the grant of probate or letters of administration does not establish that the person making the Will was the owner of the property which he may have given away by the will, and any person interested in the property included in the will can always file a suit to establish his right to the property to the exclusion of the testator in spite of the grant of probate or letters of administration to the legatee or the executor, **the reason being that proceedings for probate or letters of administration are not concerned with titles to property but, are only concerned with the due execution of the will**".

If the purpose behind the requirement of obtaining Probate is only to have authentication of the signature of the deceased-member on the Will, then, by the same token even the signature on the nomination Form would be questionable. How can the Society be permitted to admit the Nominee as "provisional Member" and give him possession, confer on him voting rights etc. Just for proving that the Will has been executed by the deceased Member, it is unreasonable to put the Nominee in jeopardy.

Further, the Member so admitted "provisionally" can act as if he is the full fledged Member, year after year!!

• **Secondly**, when for nearly 60 years (from the time the Act, 1960 came in force in 1961) the Member's wish expressed though the prescribed "Nomination Form" duly executed by the Member, attested by two witnesses & scrutinized, approved and endorsed by the Managing Committee was treated as sacrosanct, for handing over the possession of the Flat, and the provisions of section 30 had given statutory protection to the Society against any third-party

claim/s coupled with the Indemnity Bond, then, where was the need for present draconian move?

- **Thirdly,** let us have a look at the other three documents listed:
- succession certificate, or
- legal heir-ship certificate, or
- document of family arrangement executed **by the persons, who are entitled to inherit** the property of the deceased Member

18. SUCCESSION CERTIFICATE: (a) Section 370 of the Indian Succession Act, 1925: Restriction on grant of certificates under this Part: (1) A succession certificate (hereinafter in this Part referred to as **a certificate**) shall not be granted under this Part with respect to any debt or security to which a right is required by Section 212 or Section 213 to be established by letters of administration or probate:

(b) Thus, the succession Certificate is a certificate granted by the Courts in India to the legal heirs of **a person dying intestate leaving "debts and securities".** A person is said to have passed away intestate when he/she does not leave a legal Will. Succession certificate entitles the holder of debt to make payment of debt or transfer securities to the certificate-holder without having to ascertain the legal heir entitled to it.

(c) A succession certificate is issued by a civil court to the legal heirs of a deceased person. If a person dies without leaving a will, a **succession certificate** can be granted by the court to realise the **debts and securities** of the deceased.

(d) The purpose of a succession certificate is limited in respect of debts and securities such as provident fund, insurance, deposits in banks, shares, or any other security of the central government or the state government to which the deceased was entitled.

(e) A succession certificate may be useful to prove genuineness of the claimant where the inheritance amount is substantial.

Procuring a Succession Certificate

(f) The beneficiary/ legal heir is required to approach a competent court and file a petition for a succession certificate.

- **The District Judge** within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant the succession certificate.

- The petition should mention important details: such as the name of petitioner, relationship with the deceased, names of all heirs of the deceased; time, date and place of death. Along with the petition, death certificate and any other document that the court may require should also be attached.
- The court, after examining the petition, issues a notice to all concerned parties and also issues a notice in a newspaper and specifies a time frame (usually one and a half months) within which anyone who has objections may raise them. If no one contests the notice and the court is satisfied, **it passes an order to issue a succession certificate to the petitioner.**
- If there is more than one petitioner, then the court may jointly grant them a certificate but it will not grant more than one certificate for a single asset.
- As regards the costs involved**,** the Court typically levies a fixed percentage of the value of the estate as its fees (which is more particularly prescribed under the Court-fees Act, 1870, (7 of 1870)). This fee is to be paid in the form of judicial stamp papers of the said amount.
- In addition to the Court fees, the applicant will also be required to pay requisite fees to its lawyer.

19. LEGAL HEIRSHIP CERTIFICATE: (a) A legal heir-ship certificate establishes the relationship of the heirs to the deceased for claims relating to pension, provident fund, gratuity or other service benefits of central and state government departments, specifically **when the deceased has not selected a nominee.** Banks and private companies also accept such certificates for allowing transfer of deposits, balances, investments, shares, etc.

(b) Legal heir-ship certificates are not conclusive when it comes to determining the legitimate class of heirs of a deceased person under the laws of succession or the title of heirs to any disputed property that belonged to the deceased.

(c) In case of any disputes between the heirs of the deceased, the Revenue officer cannot issue a legal heir-ship certificate.

- Documents with the application
- Name of the deceased
- Death certificate original
- Service certificate issued by the head of the department/office in case of serving employee
- Ration card and Aadhaar card

- Pensioner payment slip issued by the office of accountant general in case of pensioner
- Family members names and relationship
- Applicant's signature
- Date of application
- Residential address
- An affidavit on a stamp paper

(d) After submission of the application, an inquiry will take place for the verification by the local Revenue officers as well as village administrative officials. (Tahsildar, Talathi)

- On verification, the officials will submit their report in the prescribed form.

(e) After the due inquiry, based on the report presented by the revenue officer and village administrative officials the certificate will be issued by the competent authority in which names of all the legal heirs will be mentioned.

20. FMILY ARRANGEMENT DOCUMENT: This is one of the listed documents which the Nominee can produce to discharge the burden of proof that he is the legal heir.

(a) Here the section mandates that **the family arrangement document is admissible, ONLY when the same is amongst the "legal heirs".**

- This is contrary to law laid down by the Honourable Supreme Court in a catena of decisions. (Exhaustively discussed in my third published book, "Memorandum of Family Arrangement"). The law does not restrict such arrangement amongst the legal heirs alone, but it may extend to all relatives, who may not be legal heirs.

(b) In the oft quoted case: **Kale & Others vs. Deputy Director of Consolidation** (1976 AIR 807), the Honourable Supreme Court held:

> "(v) The parties to the family arrangement must have some antecedent title, claim or interest, even a possible claim in the property which is acknowledged by the parties to the settlement. But, even where a party has no title and the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then, the antecedent title must be assumed and the family arrangement will be upheld by the courts; (vi) Where bona fide disputes are settled by a bona fide family arrangement, such family arrangement is final and binding on the parties to settlement.

(c) The Court did not say that all the parties to the Family Arrangement must be "legal heirs". Then, why the Maharashtra Government insists on having Family Arrangement document executed by "legal heirs" alone? Neither there is any logic nor any lawful authority.

(d) Now, suppose the "Nominee" is not among the list of legal heirs as per the Succession Act, but the deceased Member has desired to give Flat property to him, how can any legal heir object to it, when the property is self-acquired property?

21. NOMINEE TO PRODUCE LEGAL HEIRSHIP PROOF: Procurement of any of the listed documents discussed in the preceding paragraph is a draconian requirement and undue burden on the Nominee, apart from the associated costs, including 'hidden costs' involved and time & energy consumed in the proceedings before the Court or any Authority.

22. It is beyond comprehension, why indirectly the State Government is encouraging "litigation", "Court proceedings"; when the Courts of Law are already having huge backlog of cases for years, rather decades. Production of the simple "legal heir-ship Certificate" from the Revenue Department involves "hidden costs", and if the Certificate is in relation to a property like a Flat, then the "invisible costs" may run in lakhs, as everyone knows.

23. PROVISO TO SECTION 154B-13: The proviso reads:

"Provided that, society shall admit nominee as a provisional Member after the death of a Member **till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession Act or under will or testamentary document are admitted** as Member in place of such deceased Member"

(a) This proviso manifestly and unmistakably mandates that the Legally Valid Nomination on the records of the Society is to be ignored, disregarded; and the Nominee/s, all legal heirs or claimants interested in the House Property or Flat are inevitably, driven to the Court of Law or to the Revenue Authority to have the legal heir-ship document; and eventually get the Court decree in the regular title suit, if the word: "Provisional" is to be dropped, and the Nominee is to be admitted as a "Member" of the Society.

(b) Why the Government wants the Society to play the role of a policeman to guard the property of the deceased Member? It is his private property, and he is the best judge to decide about it.

24. DISCRIMINATION AS TO APPLICABILITY OF SECTION 30: In terms of Section 154B (2), the provisions of the "Principal Act" i.e. The Maharashtra Co-operative Societies Act, 1960, (wrongly mentioned: "this Act" in the Ordinance xxv) mentioned therein, are "not applicable" to the Housing

Societies, which, inter alia, includes "section 30" regarding transmission of property to the Nominee.

25. However, Section 30 is still on the Statute Book and is applicable to all other Co-operative Societies and the shares or interest in those societies will continue to be transmitted to the Nominee on records, without any hassel. Some may arguably justify such discriminatory application of section 30, on the premise that "the category of Housing Societies" is a different class. However, one must bear in mind the resounding words of the Honourable Supreme Court in a catena of decisions:

"Article 14 of the Constitution of India forbids class legislation; it does not forbid reasonable classification of persons, objects, and transactions by the Legislature for the purpose of achieving specific ends. Classification must be reasonable. It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from another left out of it."

It is submitted that there is no earthly purpose in such obnoxious and invidious discrimination at the drop of a hat. Why the State wants to have litigation galore and hidden costs in the process of transmission of Flat property. The State cannot justify it to be a welfare measure, in any case.

26, EPILOGUE: The upshot of the newly implanted onerous requirements mandating admission of persons legally entitled to inheritance of a Flat in a Housing Society & compelling the Nominee to produce legal heir-ship documents would fuel disputes and burden the Nominee with avoidable costs & expenditure. The Ordinance has unsettled the law qua nomination process, for benefit to none.

Let the wish of a deceased-member reflected in the nomination process be held as sacrosanct & respected by the Housing Society. Let the time-tested good practices, freedom of action and co-operative spirit prevail, and status quo ante restored.

WHAT SOLUTION OR REMEDY?

State Government:

(c) It is unlikely that the Government would change its stand, unless loud & large number of protests are hurled at the State

(d) Article 213 empowers the Governor to promulgate an Ordinance, an executive order, on urgent matters when the Assembly is not in session.

(e) It remains valid for 6 months and six weeks. If not replaced by an Act, it lapses. In the present case, the Ordinance dated 30-10-2018 is valid law up to **15 June 2019**.

(f) After 15 June 2019, it can be re-issued 2nd time, 3rd time etc.

(g) It is assumed that the present State Government will remain in power and with its numerical strength shall have the Ordinance replaced without any difficulty.

Suggest: A member may consider the following action-plan:

(i) Make a separate Will for the Flat in the Housing Society and another Will for other Assets, so that it does not reveal to the Society or anyone else, any other "private" matters of property and financial holding or family feud etc.

(ii) File regular Nomination papers as per Bye-laws in the prescribed Form with attestation by two witnesses and get third copy back showing entry no. date in Society Register.

(iii) To avoid Hassel, **make a gift deed & Register it** so that one can take advantage of "Joint Member" definition.

(iv) Let Nominee remain "provisional member", all along, no harm; property can be "sold" by "provisional Member".
