

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.828 OF 2015

**The Ruby Emerald Diamond Park
Co-operative Housing Society,**

Through its Secretary

: Petitioner

versus

Guru Dileep Mazgoankar and ors.

: Respondents.

Mr. Shailendra S Kanetkar for the Petitioner.

**Mr. Vineet B Naik, Senior Advocate i/by Mr. Sukand R Kulkarni for the
Respondent Nos.1 and 2.**

Mr. S D Rayrikar, AGP for the Respondent Nos.4 to 6.

CORAM : R. M. SAVANT, J.

DATE : 17th July 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 7/1/2015 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra by which order the Revision Application filed by the Respondent Nos.1 and 2 herein being No.630 of 2014 came to be allowed and resultantly the order dated 1/10/2014 passed by the Appellate Authority i.e. the Divisional Joint Registrar, Co-operative Societies, Pune came to be set aside.

2 The instant proceedings have arisen out of an application for bifurcation made by two persons who are the Respondent Nos.1 and 2 herein and who are the members of the newly bifurcated societies being Emerald Park

Co-operative Housing Society and Diamond Park Co-operative Housing Society. The Petitioner herein is the original Society which was registered in respect of 377 flats, 62 bungalows and 65 row houses which were constructed on 3 plots of land which were amalgamated for the purposes of the said development. The Petitioner Society was registered in the year 2010. However, thereafter disputes started between the members inter se as there were 3 categories of members, (1) the persons who are the flat purchasers (2) the persons who had purchased the row houses and (3) the persons who had purchased the bungalows.

3 The bone of contention was the maintenance charges payable by the row house owners and bungalow owners. It was the case of the Respondent Nos.1 and 2 herein who represent the bungalow owners and row house owners that the maintenance charges were fixed in a manner so as to lay a burden on the bungalow owners and the row house owners whereas subsidize it in respect of the flat purchasers. It seems that the representations were made on the said basis to the authorities exercising powers under the Maharashtra Co-operative Societies Act (herein after referred to as “the said Act”) which ultimately culminated in the Respondent Nos.1 and 2 making an application for bifurcation of the Petitioner Society into 3 societies. It appears that in terms of the procedure contemplated a draft scheme of bifurcation came to be published. It appears that the said draft scheme was once set aside

and fresh draft scheme for bifurcation was again published. After following the gamut of obtaining the objections etc from the Petitioner Society as well as obtaining the views of the federal society the draft scheme was finalized by the Deputy Registrar, Co-operative Societies, Pune. The Deputy Registrar has taken into consideration the objections to the draft scheme which were taken on behalf of the Petitioner Society. The Deputy Registrar Co-operative Societies Pune has by his order dated 24/1/2014 approved the draft scheme and passed final order of bifurcation under Section 18(1) of the said Act. The reasons as to why the Petitioner Society was required to be bifurcated find a place in the said order passed by the Deputy Registrar. The Deputy Registrar has in the said order referred to 6 circumstances which were noticed in the site inspection which was carried out on 5/6/2012 on account of which he was of the view that it would be appropriate and in fact beneficial to the administration of the society that the Petitioner Society is bifurcated. The said 6 circumstances are as follows (English Translation) :-

- “1) Three Colonies viz. Ruby, Emerald and Diamond are situated on three separate and independent plots.
- 2) The planning/construction of these Colonies is of three different types.
- 3) Colonies have independent roads, water pumping station and electric meters.
- 4) Common facilities, club-house, swimming pool, community hall and STP, Society office, Gymnasium can be shared by other members.

- 5) There are separate barricades and security guards for the security of Ruby Park. This facility has not been made available for Diamond and Emerald Park.
- 6) There is no facility of Notice Boards in Diamond and Emerald Park, however, there is separate Notice Board in Ruby Park. As per Bye-law 165, Notice Boards are necessary, which is the responsibility of the Board of Directors.”

The Deputy Registrar thereafter has elaborated the 6 circumstances in the findings recorded in the said order dated 24/1/2014, however, the undertone of the order passed by the Deputy Registrar seems to be that the Petitioner Society comprising of the flat owners, bungalow owners and row house owners is unwieldy and creates difficulties in administering it, and therefore, it would be practicable to have separate societies. The Deputy Registrar has referred to the letter of the Pune District Housing Federation dated 7/6/2012 wherein it has communicated that it has no objection to the Petitioner Society being bifurcated. The Deputy Registrar has also referred to the letter dated 10/1/2014 wherein the federation has referred to the earlier letter dated 7/6/2012 and confirmed the same. The Deputy Registrar was therefore of the view that the requirement of consultation with the federal society has also been complied with. In so far as the aspect of FSI is concerned, the Deputy Registrar was of the view that the said aspect would not have a bearing on the issue of bifurcation of the society and therefore the permission of the planning

authority i.e. Pimpri Chinchwad Municipal Corporation for bifurcation was not necessary. As indicated above the Deputy Registrar has accordingly passed the final order of bifurcation on 24/1/2014.

4 The Petitioner herein aggrieved by the said order dated 24/1/2014 passed by the Deputy Registrar took exception to the same by filing an Appeal before the Divisional Joint Registrar, Pune. The Appellate Authority i.e. the Divisional Joint Registrar, Pune has by his order dated 1/10/2014 allowed the Appeal and set aside the order passed by the Deputy Registrar dated 24/1/2014. The Appellate Authority has found fault with the findings recorded by the Deputy Registrar in his order. The Appellate Authority has held that the Petitioner Society in its Annual General Body Meetings dated 14/8/2011, and 11/9/2011 has resolved not to bifurcate the Society. The Appellate Authority has also recorded a finding as regards whether there was effective consultation and has observed that there is substance in the contention raised on behalf of the Petitioner Society that there was no effective consultation with the federal society. The Appellate Authority has observed that in the absence of conveyance it would not be possible to bifurcate the society. The Appellate Authority has observed that since there was a composite development of the plot of land in question if the society is bifurcated then dispute as regards FSI etc cannot be ruled out. The Appellate Authority has also observed that there is nothing to indicate that the development plans were

submitted separately for each of the societies. As indicated above, the Appellate Authority has accordingly by its order dated 1/10/2014 has allowed the Appeal and thereby set aside the final order of bifurcation passed by the Deputy Registrar.

5 The Respondent Nos.1 and 2 herein aggrieved by the order passed by the Appellate Authority filed a Revision Application by invoking Section 154 of the said Act. The Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra by the impugned order dated 7/1/2015 has allowed the said revision application and set aside the order passed by the Appellate Authority. The Revisionary Authority has adverted to the fact that there is a dispute amongst the members on account of maintenance charges. The Appellate Authority also adverted to the applications dated 25/7/2011 and 4/11/2011 made by the Respondent Nos.1 and 2 herein for bifurcation of the society under Section 18 of the said Act. The Appellate Authority has observed that there are constant disputes between the bungalow owners and row house owners vis-a-vis the flat owners in the Petitioner Society. The Revisionary Authority has also adverted to the fact that consultation was made with the federal society. The Revisionary Authority observed that the findings recorded by the Appellate Authority are contrary to the requirements of Section 18 of the said Act and Rule 17 of the Rules. The Revisionary Authority lastly observed that since the flat owners are

numbering 377, they have a brute majority and therefore their voice prevails over the bungalow owners and row house owners in the matter of decisions being taken in respect of the administration of the Petitioner Society and therefore it would be appropriate if the Petitioner Society is bifurcated. The Revisionary Authority as indicated above has accordingly by the impugned order set aside the order passed by the Appellate Authority and confirmed the order passed by the Deputy Registrar of final bifurcation of the Petitioner Society.

6 On behalf of the Respondent Nos.1 and 2 an affidavit in reply has been filed by the Respondent No.2 to which affidavit are annexed 3 orders passed by the Deputy Registrar dated 12/1/2015. By the first order the registration of the Petitioner Society was cancelled and by other two orders the society of the row house owners and bungalow owners being Emerald Park Co-operative Housing Society and Diamond Park Co-operative Housing Society have been registered as separate societies and the flat purchasers society is now to be called as only Ruby Park Co-operative Housing Society. To the said affidavit have also been annexed the registration certificates issued to the said Emerald Park Co-operative Housing Society and Ruby Park Co-operative Housing Society on their bifurcation. It seems that a similar certificate has also been issued in respect of Diamond Park Co-operative Housing Society. The documents relating to the opening of the accounts in the name of the two

societies have also been annexed. Hence pursuant to the order dated 7/1/2015 passed by the Revisionary Authority the aforesaid events have taken place indicating thereby that the order of bifurcation is implemented.

7 The Petitioner has also filed a rejoinder to the affidavit filed by the Respondent No.2 to which is annexed the order dated 6/2/2015 passed by the Deputy Registrar staying the order dated 12/1/2015 cancelling the registration of the Petitioner Society. It seems that the Revisionary Authority has also stayed its own order dated 7/1/2015 by the order passed on 14/1/2015. The said stay has been granted by the Revisionary Authority exparte.

8 The learned counsel appearing on behalf of the Petitioner Shri Kanetkar would seek to reiterate the grounds which were urged on behalf of the Petitioner before the authorities below viz. that merely because the flat owners are in majority the society could not have been bifurcated. The learned counsel for the Petitioner would contend that the test laid down is that the bifurcation has to be in a public interest . According to the learned counsel for the Petitioner in the instant case the said test has not been satisfied as the authorities below have merely proceeded on the basis of the difficulties which arise in the administration of the society on account of the fact that the flat owners are allegedly in brute majority. The learned counsel for the Petitioner would also seek to contend that there is every likelihood that the disputes

would arise on account of FSI etc. The learned counsel for the Petitioner would lastly contend that since there is no consultation with the federal society, as the federal society qua the housing societies in so far as Pune is concerned, has not been notified, the authorities below have erred in coming to the conclusion that there was effective consultation which is a pre-requisite for a bifurcation order to be passed under Section 18 of the said Act.

9 Per contra, the learned Senior Counsel Shri Vineet Naik appearing on behalf of the Respondents 1 and 2 i.e. the proponents of the bifurcation would support the order passed by the Revisionary Authority as well as the final bifurcation order passed by the Deputy Registrar. The learned Senior Counsel for the Respondent Nos.1 and 2 would contend that the final order of bifurcation passed by the Deputy Registrar is an elaborate order which considers the claim for bifurcation from all aspects. The learned Senior Counsel would contend that since the Pune District Housing Federation has been consulted, the authorities below were right in recording a finding that there was an effective consultation with the federal society. The learned Senior Counsel would contend that the issue of FSI etc is not germane to an application under Section 18 of the said Act as the said issue would come later on and cannot act as an impediment for consideration of an application for bifurcation filed under Section 18 of the said Act.

10 Having heard the learned counsel for the parties, in my view, there is no merit in the above Petition. As indicated above the Deputy Registrar after following the gamut of the process contemplated under Section 18 of the said Act has passed the final order of bifurcation on 24/1/2014. The said order as can be seen is a detailed order and considers the claim for bifurcation from all angles. The Deputy Registrar as can be seen from his order has taken into consideration the 6 circumstances mentioned herein-above which according to him were germane for consideration of the application for bifurcation. The Deputy Registrar has also taken into consideration whether there was an effective consultation with the federal society. The federal society in this case is the Pune District Housing Federation, which is the federation of the housing societies in Pune. The said federation has by its two letters dated 7/6/2012 and 10/1/2014 has confirmed that it has no objection to the bifurcation of the Petitioner Society. The contention of the learned counsel for the Petitioner that since the said Housing Federation has not been notified, the consultation with the said federation is of no avail can only be stated to be rejected as the acceptance of the said contention would mean that unless the federation is notified no consultation could be made with it and therefore the applications under Section 18 of the said Act for bifurcation have to be kept pending till such time as the federation is notified.

11 The Deputy Registrar as indicated above has taken into

consideration the relevant aspect which ought to weigh with the authority which is considering an application for bifurcation and has accordingly passed the final order of bifurcation. The Appellate Authority in my view has unnecessarily placed reliance on the facts which are not relevant to the consideration of the applications for bifurcation. In the instant case, there are 377 flat owners, where as the bungalow owners and row house owners are only about 127 in number. Hence possibility of the flat owners having a defining say in the decision making process in the society cannot be lost sight of as they are having a majority in the membership of the Petitioner Society. As mentioned herein above the dispute seems to have been triggered of between the flat owners and the bungalow and row house owners on account of the maintenance charges. It is with a view to stop bickering and acrimony between the said to categories of members and to have proper administration that the Deputy Registrar has passed the final order of bifurcation which was upset by the Appellate Authority for the reasons which were not germane to an application under Section 18 of the said Act. The Revisionary Authority in my view has restored the parity in the sense that the Revisionary Authority has confirmed the order passed by the Deputy Registrar for the same reasons which find a place in the order passed by the Deputy Registrar. One of the considerations obviously has to be whether the administration of the society can be carried out in a spirit of cooperation as envisaged under the said Act. In the instant case the record indicates the constant bickering between two

categories of members.

12 As mentioned herein above the order dated 7/1/2015 that is the impugned order confirming the order passed by the Deputy Registrar of final bifurcation was already acted upon by passing of the said 3 orders dated 12/1/2015. In so far as the stay granted by the Divisional Joint Registrar to the order dated 12/1/2015 is concerned, in my view, since the orders dated 12/1/2015 are consequential to the order dated 7/1/2015 the question that begs an answer is how the authority exercising powers under the said Act could have stayed the consequential orders passed pursuant to an order passed by an higher authority.

13 In my view, the order passed by the Revisionary Authority which confirmed the order passed by the Deputy Registrar cannot be said to suffer from any illegality or infirmity for this Court to interfere with in its writ jurisdiction under Articles 227 of the Constitution of India. The above Writ Petition is accordingly dismissed.

14 The learned counsel appearing on behalf of the Petitioner Shri Kanetkar applies for continuation of the ad-interim order. In the facts and circumstances of the present case, the said prayer is rejected.

[R.M.SAVANT, J]