

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5665 OF 2015**

Mauli Rukini Co-operative
Housing Society Ltd, Nashik

Petitioner

Vs

D.R.Donalds Promoters and
Developers Pvt. Ltd and Ors.

.. Respondents

Mr. Sachin Gite, Advocate for the petitioner.

CORAM : R.G.KETKAR,J.

DATE : 16/07/2015

PC:

1. Heard Mr. Sachin Gite, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant no.1 has challenged the Judgment and order dated 3.11.2014 passed by the learned 5th Jt. Civil Judge, Sr. Dn., Nashik below Exhibit-194 in Spl. Civil Suit No.585 of 2009. By that order, the learned trial Judge rejected the application filed by defendant no.1 challenging jurisdiction of civil Court on the ground that suit is barred as statutory notice under section 164 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') was not given before instituting the suit.

3. By the impugned order, the learned trial Judge after considering Bye-laws of the society and in particular bye law no.5, held that the dispute does not touch the business of the society and as such suit is not barred for not giving notice under

section 164.

4. In support of this petition, Mr Gite strenuously contended that the learned trial Judge has committed error in holding that the suit for specific performance of contract does not touch the business of the society. He invited my attention to bye law no.5 of the society and submitted that the controversy raised in the suit is clearly covered by bye-law. He submitted that if dispute touches the business of the society, then it is imperative to issue notice under section 164 against the cooperative society. Defendant no.1 is registered cooperative society under the Act and, therefore, the transaction in the suit touches the business of the society. In support of his submission, he relied upon the following decisions:

1. Suprabhat Co-op.Hsg Society Ltd Vs. Span Builders, 2002 (3) Mh. L. J. 837 and in particular paragraph 10 thereof;
2. C.F. Marconi Vs. Madhav Co-operative Hsg Society Ltd, 1985 (2) Bom C.R. 357.

5. In the present case, the learned trial Judge has reproduced bye law no.5 of the society. The said bye-law, inter alie, provides that defendant no.1 society shall acquire plot from Gat No.1B, admesuring 20000 sq. meters either on ownership basis or on lease basis, for constructing Galas and distributing them to its members. Respondent no.1 has instituted suit, inter alia, contending that defendant no.1 has entered into agreement of

sale on 26.9.2006. Defendant no.1, through defendants no.2 and 3, agreed to sell plots no. 1 to 55 specified therein in favour of the plaintiff. Respondent no.1 has sought specific performance of that agreement.

6. After considering the bye-law, the learned trial Judge held that the said bye-law does not contemplate business of the society to buy and sell land in open market. The learned trial Judge, therefore, held that the transaction in the suit does not touch the business of the society and therefore notice under section 164 of the Act is not necessary.

7. In the case of Suprabhat Co-op. Society Ltd (supra), in paragraph 10 the learned Single Judge of this Court observed that objects of the society, inter alia, include to buy or take on lease the plot bearing No.C-39 of Sector 12, Kharghar, admeasuring 7252 sq.meters and to construct flats thereon for allotment to the members of the society for their authorized use. The contractual relationship which was entered into between the applicants and the respondents was thus in furtherance of and towards implementing the basic object of the applicants as a Tenant Co-partnership Housing Society. In my opinion, the facts in that decision and the present case are materially different and, therefore the said decision does not apply to the facts of the present case.

8. As far as reliance placed on the decision of C.M.Markoni

case (supra) is concerned, in that case, the main object of the society was to purchase and sell lands and also to buy and sell buildings and construct such buildings mainly for the benefits of its members. The agreements dated May 16, 1963 had made it clear that the society had purchased the said premises for the purpose of demolition and reconstruction of a building thereon and that a part of the demolition work had already begun. In order to enable the society to complete the demolition work of Shanti Vihar with a view to reconstructing a new building it was necessary that the society should get possession of the part which was with the plaintiff. The very purpose of the agreement is to secure such possession in consideration of letting out certain other premises from the adjoining building, viz. Anand Vihar. In my opinion, the facts in the decision of C.M.Markoni and the present case are also materially difference. In view thereof, the said decision does not advance the case of the petitioner. In the instant case, the defendant no.1 had agreed to sell plots no. 1 to 55 in favour of the plaintiff as per the agreement of sale dated 26.9.2006. In my opinion, the learned trial Judge rightly held that the said transaction/dispute does not touch the business of the society and therefore notice under section 164 of the Act is not necessary. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)