

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4298 OF 1997

Mr. Uttam B. Desai & others.	...	Petitioners
vs.		
The State of Maharashtra and others. Classic Credit Limited (in liquidation)	...	Respondents

.....

Ms. Priyanka Vora i/b Cyril Amarchand Mangaldas for plaintiff.
Ms. Priyanka Shetty for Official Liquidator i/b Legal Assistance for
defendants.

....

CORAM : M. S. SONAK, J.
DATE : 21st NOVEMBER, 2015.

P.C.:

1. The challenge in this petition is to the order dated 03/02/1996 made by Minister (Co-operation) – respondent No.1 and order dated 31/01/1997, made by respondent No.2, basically seeking implementation of the order dated 03/02/1996.

2. By the impugned order dated 03/02/1996, registration granted to Vyas Co-operative Housing Society Ltd. i.e. petitioner No.5 has been cancelled. The impugned order dated 03/02/1996 was made by the respondent No.1 in Revision Application No.RVA-1692/134/15/C instituted by the respondent No.4 Pukhraj Gourishankar Vyas. The

registration has been cancelled on the ground that there was suppression of relevant and important information by the petitioner No.5 society.

3. Shri Bhadrashete, learned counsel for the petitioners has submitted that none of the petitioners were issued any notice in regard to the Revision Application No.RVA-1692/134-14/C instituted by Pukhraj Vyas. In this regard, Mr. Bhadrashete invites reference to the pleadings in Paragraph 6 of the petition which read thus:-

“6 :- The petitioners state that thereafter the petitioners or any office bearers of the petitioner No.3 society has not been given a notice/intimation, regarding challenging an order dated 18/2/1992 and as such the petitioner No.5 and its members were all along under impression that an order dated 18/2/1992 is final; however, to their surprise the petitioner No.1 received on 9/7/1997 a notice dated 4/7/1997 from the respondent No.3 thereby directing the petitioners to handover to the later the registration certificate and all related documents of the petitioner No. 5 at 12.50 p.m. on 11/7/1997. In the said notice a reference was made to an order dated 31/1/1997 passed by the respondent No. 2 and accordingly the petitioners approached the office of the respondent No.2 and on 15/7/1997 received copies of the orders dated 3/2/1996 and 31/1/1997. The petitioners state that thereafter by their letter dated 18/7/1997 the petitioners requested the respondent Nos.1 and 2 to furnish to the petitioners proceedings adopted by the respondent No.4, copy of notice, if any, issued, copy of Roznama, etc.; however, the said documents and details so far have not been made available to the petitioners. The petitioners state that till this date no person from the said list of 26 persons

ever approached to society for membership and/or made any contribution. The petitioners state that the petitioners' request the respondent No.2 has furnished certain documents; however, the said documents are not concerning to the Revision application, if any, filed before the respondent No.1, the proceedings and hearings that took place before the respondent No.1 and 2, Roznama, notices issued etc. Hereto annexed as Ex. "U", "V", "W" & "X" are copies of said order and letters."

4. Although, Rule was granted in this petition on 25/07/2002 and the ad-interim orders granted earlier i.e. on 16/09/1997 were directed to continue, till date, neither respondent Nos.1, 2 and 3 nor respondent No.4 have filed any return. Respondent Nos.6 to 18 who were subsequently impleaded as respondents, have filed a reply. However, the said reply does not deal with the aforesaid averments in paragraph No.6 of the petition. Incidentally, respondent Nos.6 to 18 were not even parties to Revision Application No.RVA-1692/134/15/C and therefore, the said respondents have rightly not dealt with the factual averments in paragraph No.6 of the petition, as aforesaid.

5. In the context of specific averments that the petitioners were not served with any notice in the revision application, on behalf of respondent No.1 some return ought to have been filed or at least record produced to demonstrate that notice had in fact, been served upon the petitioners. The respondent No.4 and thereafter, his legal representatives

have also not filed any return to demonstrate, that the notice in the revision application had indeed been served upon the petitioners. The petitioners have placed on record in the form of Exh. U, V, W and X applications / letters addressed to the authorities requiring them to furnish copies of Roznama, notice is issued, etc. with a view to establish that the petitioners were never served with any notice in the revision petition. The petitioners have averred that despite all such letters and applications, no such details were ever furnished to the petitioners. For all these reasons, it is reasonable to accept that the petitioners were indeed not served with any notice in the revision application.

6. The petitioners obtained the knowledge of the impugned order only after they were served with the consequential order dated 31/01/1997 seeking implementation of the impugned order dated 03/02/1996. The petitioners have been protected by way of interim relief, since the year 1997. The impugned order, being made without issuance of notice to the petitioners, is in clear violation of principles of natural justice and fair play. The impugned order visits the petitioners with serious consequences. Therefore, same could not have been made without affording opportunity to the petitioners. On this ground, the impugned order dated 03/02/1996 is liable to be set aside and is hereby set aside. The subsequent order dated 31/01/1997, being merely

consequential, the impugned order dated 03/02/1996 also cannot survive and is consequently set aside.

7. There are disputes between the petitioners and respondent Nos.6 to 18. The learned counsel for the petitioners states that issues in this regard are pending before Civil Court. Accordingly, it is made clear that this Court has not dealt with the said disputes and the Civil Courts are required to decide the same in accordance with law and on its own merits. The orders impugned in this petition have been set aside only on the ground that the same were made without due compliance with the principles of natural justice and fair play.

8. Consequent upon setting aside the impugned order, the revision application instituted by the respondent No.4 before the respondent No.1 is restored. The legal representatives of respondent No.4 who are now on record in this petition are at liberty to effect formal amendment so as to bring themselves on record and thereafter, pursue the revision application. The petitioners and respondent Nos. 4 to 18 are directed to appear before the respondent No.1 on 14th December, 2015 at 11.00 a.m. and produce authenticated copy of this order. All concerned to act on basis of such authenticated copy. In case, respondent Nos.4 to 18 do not appear before the respondent No.1 on

the same date, revisional authority is requested to issue a fresh notice to the said respondents, particularly since, the said respondents are not present at the stage of final hearing.

9. The respondent No.1 to decide the revision application on its own merits and in accordance with law, after affording an opportunity of hearing to the petitioners and respondent Nos.4 to 18. Reference to respondent No.4 in the Judgment and order to be regarded as reference to respondent Nos.4-A to 4-G i.e. legal representatives of deceased – respondent No.4.

10. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)