

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 10550 OF 2014**

Tilak Nagar Samrat Co-operative
Housing Society Ltd.

....Petitioner.

Vs.

Mr. Prabhakar Balkrishna Patil & Ors.

....Respondents.

Mr. Ratnakar S. Udayavar a/w Mr. G.N. Salunke for the Petitioner.

Mr. Gaurav Parkar for Respondent No.1.

Mr. S.D. Rayrikar, AGP for Respondent Nos. 29 and 30.

CORAM:- ANOOP V. MOHTA, J.

DATE :- 20 FEBRUARY 2015.

PC:-

Rule. Rule made returnable forthwith.

Heard finally by consent of the parties.

2 The Petitioner-Society has challenged order dated 31 May 2014, whereby, the Respondents-occupants' Revision Applications are allowed, and thereby set aside order dated 20 February 2013 passed by the Deputy Registrar under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act") thereby, directed to admit all the Respondents as a members of the Society in

respect of their respective flats/shops and further directed to take necessary entries in the Share Certificate and the records of the Society.

3 The main issue/contention so raised by the Society was in respect of non-payment of membership fee, to be paid by the Builder to the Society. The Respondents' submission that the amount was paid to the Builder however, the Builder in turn, not paid. Therefore, they should not be punished and/or their membership should not be denied, in situation like this for no default of theirs. However, the parties have arrived at settlement, as the Respondents-Members, by keeping their rights, deposited the full amount as claimed by the Society towards the membership fees of Rs.4,20,000/- (At the rate of Rs.15,000/- per members, i.e. Respondent Nos. 1 to 28), by cheque dated 4 February 2015, which has been honoured.

4 In view of this, the Society has also no objection to proceed and grant the membership. Even otherwise, taking overall view of the matter, for the above reason, I am inclined to dispose of the present Writ Petition by maintaining impugned order dated 31

May 2014, as the main issue itself is resolved, as stated above. The submission is made that the election of the Society is on Sunday. The grant of membership by impugned order dated 31 May 2014, needs to be accepted even by the Society for such purposes, as the Society was directed to take necessary entries accordingly. Therefore, in the interest of justice and to avoid further complications and as the Respondents-members are entitled to get all the benefits of membership, the Society is directed to give necessary entries immediately and do necessary things, so that the Respondents-members can act as a member of the Society for all the purposes, including up coming election on 22 February 2015.

5 The Petition is therefore, allowed.

6 Rule made absolute accordingly. There shall be no order as to costs.

(ANOOP V. MOHTA, J.)