

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10818 OF 2014

Ankush K. Thonge and ors. .. Petitioners
vs.
State of Maharashtra and ors. .. Respondents

Mr. Mayuresh Modgi for the Petitioners.
Mr. S.D. Rayrikar, AGP for Respondent Nos.1 to 3.
Mr. Kishor Patil for Respondent No.4.

CORAM : M. S. SONAK, J.
DATE : 21 JANUARY, 2015

P.C. :-

1] The challenge in this petition is to the appointment of an Administrator to manage the affairs of Indradhanu Palace Cooperative Housing Society Limited.

2] The main reason for appointment of Administrator was the insistence on the part of the Society to recover non-occupancy charges from respondent No.4, allegedly in excess of the prescribed limits and in defiance of the orders made by the Authorities. Such alleged excess recovered from respondent No.4 is Rs.4200/-.

3] Learned counsel for the petitioners submitted that respondent No.4 was himself an Administrator appointed to govern the affairs of

the Society. At that stage, respondent No.4 became a member of the Society and has been refusing to pay non-occupancy charges.

4] Looking to the nature of controversy, this Court suggested to the parties that without prejudice to their rights and contentions in the matter of levy of non-occupancy charges, the matter be settled.

5] Learned counsel for respondent No.4 (Satnamsing Rasgotra) very fairly stated that in case the amount of Rs.4200/- is refunded, respondent No.4 will not press his complaint, which has resulted in appointment of the Administrator.

6] Learned counsel for the petitioners has also very fairly stated that the Society shall, without prejudice to its rights and contentions that non-occupancy charges were legitimately recovered, refund the amount of Rs.4200/- within a period of one week from today.

7] In view of the aforesaid reasonable approach by both the parties, this Court is of the opinion that the impugned order dated 1 April 2011 for appointment of an Administrator is liable to be quashed. The appointment of Administrator is a serious matter and

the same should normally not be resorted to for the purposes of settlement of disputes, which are mostly private in nature, apart from being substantially trivial. In view of the reasonable approach of both the parties, it is only proper that the impugned orders dated 13 August 2014 as well as 1 April 2011 are set aside. They are accordingly set aside.

8] It is made clear that both the parties, i.e., petitioners and respondent No.4 have not given up their claims against each other in the matter of non-occupancy charges. The refund as aforesaid is only without prejudice. It will, therefore, be open to the Society to approach the Cooperative Court for enforcement of non-occupancy charges, including the amount which they have now refunded without prejudice. Similarly, it will be open to respondent No.4 to raise all available defences in support of his plea that such charges are either not leviable or that the demand is in excess of the prescribed limits.

9] The petitioners to refund the amount of Rs.4200/- (Rs. Four Thousand Two Hundred only) to respondent No.4 within a period of one week from today, as aforesaid.

10] It is also made clear that this Court has not at all gone into the controversy with regard to the payment of non-occupancy charges and none of the observations made herein shall be considered as any expression of opinion on the said issue.

11] All contentions of the parties are kept open.

12] With the aforesaid observations, petition is disposed of. There shall be no order as to costs.

(M. S. SONAK, J.)

dinesh