

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2343 OF 2014

Jagat Prakash Co-operative Housing Society Limited ... Petitioner
vs.

Shri Harish Ramchandani (Since Deceased)
1A) Puri Harish Ramchandani & Ors. ... Respondents

Mr.Manmohan Rao for the Petitioner.
Mr.Mayur Khandeparkar a/w Mr.Tejas Shah i/b Lilani & Shah Co. for the
Respondent No.1B.
Mrs.M.S.Bane, "B" Panel Counsel for the Respondent No.2 & 3.

CORAM : A. K. MENON, J.
DATE : OCTOBER 19, 2015.

P.C.

. The present Writ Petition is directed against an order dated 20th August, 2013 passed by the District Deputy Registrar Co-operative Societies Mumbai under Section 154 of the Co-operative Societies Act where by the Revision Application filed by the applicant Society was dismissed. The Revision Application was preferred against an order dated 22nd August, 2012 passed in the application made by the Petitioner Society seeking issuance of Certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 passed by the Assistant Registrar Co-operative Societies. The Petitioners application was rejected by reason that the original Respondent No.1 was not a

member of the Petitioner Society. It was established by two of the authorities namely before the Assistant Registrar as well as before the Divisional Joint Registrar that the original Respondent No.1 was a member of the Aradhana Co-operative Housing Society at all material times.

2. It is the case of the Petitioner that the Respondent No.1 was a member of the Society and had failed to pay the dues of the Society. The impugned order while considering the challenge to the order rejecting the application for issuance of a Certificate as aforesaid considered the fact that the original Society Jagat Prakash Co-operative Housing Society having its office at Plot No.89, Sawant Bhavan, Naigaon Cross Road, Dadar, Mumbai-14 was bifurcated as per an order dated 8.4.2001 which resulted in different Societies by name; Jagat Bhavan Co-operative Housing Society, Aradhana Co-operative Housing Society and Vandana Co-operative Housing Society being formed.

3. The impugned order has recorded that the original Respondent No.1 is a member of the Aradhana Co-operative Housing Society. The Petitioner Society had initially challenged the order of bifurcation dated 8.4.2001 before the Additional Joint Registrar, Co-operative Societies, Mumbai Division and came to be dismissed on 28.5.2013. It appears that the Petitioner Society challenged the bifurcation order by filing an application under Section 21A of the

Co-operative Societies Act being application No.31 of 2010 alongwith an application under Section 152 of the Act. Whereby it sought to challenge the bifurcation orders dated 8.4.2001 and 20.7.2004. By these applications came to be decided by an order dated 28.5.2013, whereby the applications were dismissed, thereby confirming the orders of bifurcation. Accordingly, this order of 28.5.2013 has not been challenged and therefore, it operates in respect of the parties concerned namely the three Societies.

4. It is the case of the Petitioner that the order dated 8.4.2001 was not a final order, it is merely a draft and that no final order had been passed. However, this appears to be directly contrary to the record, which shows that the aforesaid order was the subject matter of challenge in the application made before the Divisional Joint Registrar and in respect of which an order was passed on 28.5.2013.

5. The Petitioners have contended that the dues of the first Respondent and thereafter, the dues of the Respondent No.1A, 1B and 1C (the legal heirs of the Respondent No.1 who expired during the pendency of the litigation) are in respect of the period from 2011, which is obviously after the order of bifurcation which took place in the year 2000. As seen from the affidavit filed by Mr.Ramchandra S. Lokhande, Assistant Registrar of Co-operative Societies on behalf of the Respondent No.2 and 3. In the paragraph 2, it is clearly mentioned that

the draft bifurcation order of the Petitioner Society was issued by the Assistant Registrar of Co-operative Societies, F/N Ward, Mumbai on 10.11.2000 dividing the Societies in to four as detailed therein. The learned counsel for the Petitioner had submitted that there is an obvious error in the order in that the Petitioner Society is located in the F South ward. Whereas, the order refers to the Respondent No.1 as a member of the Society in the F North ward. The reason for this apparent anomaly is not difficult to see inasmuch as the Society was divided into four plots of which are as follows;

1. Plot No.93, Wadala Scheme, Wadala (E), Mumbai-31.
2. Plot No.319 & 320 Wadala Scheme, Wadala (E), Mumbai-31.
3. Plot No.36, Bandra, Mumbai-50 and
4. Plot No.104, Dadar, Mumbai.

It is thus appears where in plot No.104 which is presently managed by the Aradhana Co-operative Housing Society of which the first Respondent and his heirs are entitled to its admitted possession that plot in occupation of the original Respondent No.1, which is located in the building situated at plot No.320.

6. The house of occupant of building known as Jagat Bhavan situated at plot No.320 Wadala Mumbai which is managed by the Aradhana Co-operative Housing Society. Accordingly, it is submitted by Mr.Khandeparkar who appears for the original Respondent and his heirs that the aforesaid Respondents are members of the Aradhana

Co-operative Housing Society and admittedly so right from inception that is from the year 2000 and it is not arguable that the said Respondents would be required to pay any dues of the Petitioners when infact the original member is not a member of the Petitioner Society. The finding of both authorities below are that the Petitioner was never a member of the Society at least for a material period.

7. Furthermore, during the course of arguments Mr.Khandeparkar pointed out that the list of members of the Jagat Prakash Co-operative Housing Society was furnished at the time of preparation of the voters list vide a letter dated 21.5.2015. The names of all 66 members were mentioned and the names of the Respondent No.1 heir 1A to 1C are conspicuous by their absence.

8. In the circumstances there is no question of issuance of a Certificate against the said Respondent No.1 or subsequently his heirs. From a perusal of the record and particularly the affidavit filed by the Assistant Registrar of Co-operative Society it is evident that the Respondent No.1 was not a member of the Petitioners Society and even the Revision application filed by the Petitioner was dismissed.

9. In the circumstances, I do not find any perversity in the order impugned in the present Petition which does not call for interference and hence I pass following order;

- (a) Writ Petition is rejected.
- (b) There will be no order as to costs.

(A. K. MENON, J.)