IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11228 OF 2014

M/s. Ahura Builders and ors. : Petitioners.
Versus
Abasaheb Nathuji Kunjir and ors. : Respondents.

Mr. Vijay Patil i/by Mr. Nikhil Chavan for the Petitioners.
Mr. Sandeep M Pathak for the Respondent Nos.1 and 2.
Mrs. V S Nimbalkar AGP for the Respondent Nos. 3 to 6

CORAM : R. M. SAVANT, J.
DATE : 09th June 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 22/08/2014 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra by which order the Revision Application being No.45/2014 came to be allowed and resultantly the order dated 25/09/2013 passed by the Divisional Joint Registrar came to be set aside and the orders dated 19/11/2012, 01/02/2013 and 12/03/2013 which have been referred to in the operative part of the impugned order in clause No.2 thereof came to be confirmed. The Revisionary Authority has also set aside the registration of the Respondent No.2 – Society made at the behest of the Petitioner herein.

2 The Petitioners herein are the developers who have undertaken the development in question. It appears that in the said development, 6

buildings are to be constructed, out of which 4 buildings are complete. It is the case of the Petitioner herein that it convened a meeting of the members of the proposed Society on 4/12/2012 and amongst the items on the agenda was the issue of registration of the Respondent No.2 Society. It is the case of the Petitioner that the Respondent No.1 who is one of the flat purchasers and who also claimed to be a promoter of the said Society i.e. the Respondent No.2 was present in the said meeting. It is the case of the Petitioner that a resolution came to be passed in the said meeting dated 4/12/2012 relating to the steps taken for registration of the Society. It appears that prior thereto the Respondent No.1 as a chief promoter had submitted a proposal on 20/10/2012for registration of the proposed Society comprising of the flat purchasers of the building in question. It is the case of the Respondent No.1 that a notice of the application for registration filed by the Respondent No.1 was published in a local newspaper "Punyanagari" under the signature of the Respondent No.1 as a Chief Promoter. It appears that the said proposal was processed by the Deputy Registrar of Co-operative Societies and the proposal of the Respondent No.1 came to be accepted and the Society accordingly came to be registered on 12/02/2013.

3 The said registration at the behest of the Respondent No.1 came to be challenged by the Petitioner by way of an Appeal before the Divisional Joint Registrar, Pune. The Divisional Joint Registrar by his order dated 25/09/2013

set aside the registration of the Society which was done at the behest of the Respondent No.1 and issued directions as contained in the operative part of the said order amongst which, is the direction that the application for registration filed by the Petitioner should be processed and taken to its logical conclusion.

4 The Respondent No.1 aggrieved by the said order dated 25/09/2013 passed by the Divisional Joint Registrar filed a Revision Application before the State Government. The said Revision Application was heard by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra, and as indicted herein above, by the impugned order dated 22/08/2014 allowed the same and resultantly reinstated the registration of the Society made at the behest of the Respondent No.1 as also the orders which have been passed by the authorities regarding opening of the Bank Account etc. which are referred to in clause (2) of the operative part of the impugned order. The Revisionary Authority also set aside the registration of the Society which was done at the behest of the Petitioner which registration was done in the interregnum as there was no stay operating in the Revision Application. The Revisionary Authority whilst allowing the Revision Application has adverted to the fact that the Application filed by the Respondent No.1 being accepted, the Society being registered on 12/2/2013 at the behest of the Respondent No.1 should not have been interfered with at the behest of the Petitioners who are the developers of the property in question.

The Revisionary Authority has also referred to the fact that the permission to open Bank Account etc. granted to the Petitioners was of a limited duration as contained in the order dated 21/5/2010 and since the time was not extended it was not open for the authorities to register the Society at the behest of the Petitioners. The Revisionary Authority has referred to the judgments/orders passed by a learned Single Judge of this Court in the penultimate paragraph of the impugned order wherein the learned Single Judges of this Court have held that if the developer does not take steps to register the Society, then he would not be entitled to oppose the application made by the flat purchasers for registration.

5 The learned counsel for the Petitioners sought to assail the order passed by the Revisionary Authority on the ground that since the Petitioners had taken steps to register the Society, had thereby sought to comply with the obligations of the developers/promoter under the Maharashtra Ownership of Flats Act, 1963, the Revisionary Authority had therefore erred in interfering with the order passed by the Divisional Joint Registrar.

6 In the instant case as indicated herein above the Respondent No.1 is a flat purchaser and the chief promoter of the proposed Society of the flat purchasers of the building in question. Since the construction was long complete, in so far as the building comprising the Society is concerned, the

Respondent No.1 can be said to be well within his rights to file an Application for registration of the Society. The question that begs an answer is as regards the right of the Managing Partner of the Petitioners, who are undisputedly the developers of the property in question, of being the chief promoter of the society in question. The reasons for Petitioners interested in the registration are not far to seek. However, it is not necessary for this Court to go into the said aspect. The Managing Partner of the Petitioners can at the most be entitled to be a member of the Society which has been registered at the behest of the Respondent No.1 in respect of the unsold flats, however, the Petitioner No.2 cannot in the guise of being the chief promoter seek to control the Society.

7 In my view, the reasons mentioned by the Revisionary Authority for allowing the Revision Application are unexceptional having regard to the essence of the Maharashtra Ownership of Flats Act 1963. The impugned order therefore does not merit any interdiction at the hands of this Court in its writ jurisdiction. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]