

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2207 Of 2011

Lalchand Soni	..	Petitioner
<i>Versus</i>		
Gopal Sharma and others	..	Respondents

.....

Mr. Sanjiv Sawant for the Petitioner.
Mr. N.N.Bhadrashete for Respondent Nos.1 to 4.
Ms.Geeta Shastri, Addl. G.P. for State.

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CORAM: A. A. SAYED, J.
DATE : 28 JULY 2015.

P.C.:

The Petitioner has filed this Petition under Article 226 of the Constitution of India challenging the order dated 9 September 2011 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, in Appeal which was filed by some of the members of Society namely, Om Satnam Co-operative Housing Society Ltd. By the impugned order, the Divisional Joint Registrar allowed the Appeal and set aside the order dated 28 July 2010 passed by the Deputy Registrar, Co-operative Societies, Mumbai under Section 77A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "MCS Act"). The operative part of the order dated 28 July 2010 of the Deputy Registrar reads as follows:

“In exercise of the powers conferred on me under Section 3 of the Maharashtra Co-operative Societies Act, 1960 vide G.O. No. CSL 1493/1162/ CR-47/15-C dated 7th Aug. 1993, I. S. P. Ghorpade, District Deputy Registrar, Co-operative Societies (III), Mumbai under Section 77A of the Maharashtra Co-operative Societies Act, 1960, hereby appoint Shri Nilesh Chauhan as administrator on Om Satnam Co-op. Housing Society, 3rd road, Khar(W), Mumbai 400 052 to manage the affairs of the society till a new committee enters upon office.

The administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may, from time to time, give, have power to discharge all or any of the functions of the committee or of any officer of the society and take all such actions as may be required to be taken in the interest of the society.

The Administrator so appointed shall hold office for a period of six months from the date of assuming the management of the society and shall make necessary arrangements for constituting a new committee within the said period.”

(emphasis supplied).

2. Thus, by the order dated 28 July 2010 of the District Deputy Registrar, the Administrator was appointed to manage the affairs of the Society till a new Committee enters office. The Administrator was to hold office for a period of six months. The Administrator was directed to make necessary arrangements for constituting a new Committee within the said period. As indicated

earlier, the aforesaid order was set aside by the impugned order dated 9 September 2011 of the Divisional Joint Registrar. Hence this Petition.

3. On 22 November 2011, this Court admitted the Petition and passed the following order:

“Heard.

2. Rule.

3. Learned Advocate appearing for the Respondents waives service.

4. Place the above petition for final hearing on 19th December, 2011. In the meantime, no further steps shall be taken by the present office bearers of the society pertaining to the redevelopment of the property of the society. The Respondents shall file their affidavit, if any, within two weeks from today.

S.O. to 19th December, 2011.”

Thus, the only restraint upon the office bearers of the society was that they would not take steps for redevelopment of the property of the society.

4. On 8 July 2015, the Respondent No.1 has filed an Additional Reply in this Petition wherein in para No.4(b), it has been averred as follows :

“4(b) With reference to para 4, I most respectfully say that petitioner's allegations alleging that I have tried to overreach order dated 22/11/2011 passed by this Hon'ble Court in the Writ Petition herein, are false and have been made with malafide intention. I say that this Hon'ble Court, by an order dated 22/11/2011, directed the then office bearers of the society not to take further steps pertaining to redevelopment of property of society. I say that I and other the then office bearers have not take any step pertaining to redevelopment. Therefore, allegations alleging overreaching etc. are without any basis. I say that since the period of Managing Committee had come to an end, therefore, elections have taken place in accordance with provisions of law, managing committee and office bearers are elected and they are functioning. I say that since election has taken place under the supervision of a Officer appointed by the Dept. of Co-operation, therefore, we have pointed out facts pertaining to said election. I say that there was no order restraining holding of election and electing Managing Committee members. Therefore, Petitioner's allegations are false. I deny that I and my wife Mrs. Sunita Sharma were never recognized as members of the Society. I say that the petitioner who was acting as Secretary in April, 1999, he had issued Agenda Notice of the meeting dated 11/04/1999 under his signature, as Secretary. He had given me xerox copy of the said Agenda Notice. Agenda Nos. 4 and 5 pertain to Application made by me and my wife in respect of transfer of Garage No.9-B in favour of my wife and Garage No.9-A in my favour. I say that I and my wife, each have paid share capital of Rs.250/- by Cheque No.505463 dated 18/04/1999 and by Cheque No. 438851 dated 11/11/1998 both drawn on Corporation Bank, Khar Branch. I say that Share Certificate No. 7 dated 01/05/1999 is issued in my name and Share Certificate No.6 dated 01/05/1999 is issued in the name of my wife. I say that the said share

certificates are signed by three persons, (1) the Petitioner, the then Secretary, (2) one Mr.Narayandas Harjani, the then Chairman and (3) Ms. Kauslya Saluja the then a Managing Committee member. Therefore, I deny Petitioner's contentions that I and my wife are not the members of the Society. I deny that I and my wife were not recognized as members of the Society. I say that so far reference to the report of CBI is concerned, the truthness of contents thereof is not yet proved. I say that the Petitioner who was holding record of the Society in 2004, despite repeated attempts did not handover the record to the elected managing committee. With reference to rest of the contents of said pars I repeat and confirm what is stated hereinabove and in my earlier affidavits and deny what is contrary to and inconsistent therewith.”

(emphasis supplied).

5. The learned Additional Government Pleader also confirms that pursuant to an order passed on 16 February 2015 by the Deputy Registrar, the new Managing Committee has come into being.

6. In view of the aforesaid supervening events, I am not inclined to grant any relief in the present Petition. It is however, submitted on behalf of the learned counsel for the Petitioner that the very members who were members of the earlier Managing Committee have been appointed as members of the new Managing

Committee. In my view, that would not be of any consequence and the Petitioner, if aggrieved, would be required to challenge the order dated 16 February 2015 and the election/constitution of the New Managing Committee, if so advised.

7. In the circumstances, the Petition is disposed of with liberty to the Petitioner to challenge the order dated 16 February 2015 and the election/constitution of the new Managing Committee, if so advised. All contentions are kept open.

8. The learned counsel for the Petitioner prays that the interim order passed by this Court on 22 November 2011 be continued for a period of four weeks from today. The Learned counsel for Respondent Nos.1 to 4 however, opposed the prayer. He has pointed out that the society building which was constructed in 1948, is in an absolutely dilapidated condition and is required to be redeveloped without any further delay.

9. Having regard to the facts and circumstances of the case, I am not inclined to continue the interim relief granted by the Court on 22 November 2011. In my view, considering the manner in which

the matter has proceeded and what has transpired thus far, the dispute appears to be more of a personal nature inter se between the Petitioner and Respondent No.1. Even assuming that the Petitioner may have some genuine grievances, the other members of the Society cannot be made to suffer and the redevelopment of the Society building (which is stated to be in a dilapidated condition) cannot be stalled only to settle personal scores between members inter se. The statement of the learned counsel for Respondent Nos.1 to 4 is, however, recorded that a fresh Special General Meeting shall be called, after due notice to the Petitioner, to pass any resolution so far as redevelopment of the Society building is concerned and the earlier resolution of the Society in respect of redevelopment shall not be acted upon. The statement is accepted.

10. The Petition is disposed of in the aforesaid terms.

(A. A. SAYED, J.)