

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 530 OF 2016

M/S. PALMAR PREMISES HOLDERS
CO-OPERATIVE SOCIETY LTD., REP.
THR. ITS TREASURER, PURSHOTTAM J.
KAMAT.

... Petitioner

Versus

MR. UTTAM KUNDAIKAR AND ANR.

... Respondent

Shri Arunkumar V. Nigalye, Advocate for the Petitioner.
Ms. Susan Linhares, Advocate for Respondent No.1.
Ms. R. Kantak, Advocate for Respondent No.2.

Coram:- C. V. BHADANG, J.

Date:- 3rd October, 2016

ORAL ORDER :

Heard Shri Nigalye, the learned Counsel for the petitioner, Ms. Susan Linhares, the learned Counsel for respondent no.1 and Ms. R. Kantak, the learned Counsel for respondent no.2.

2. By this petition, the petitioner-Society is challenging the judgment and order dated 14/03/2016 passed by the Cooperative Tribunal in Cooperative Appeal No.6/2016. By the impugned order, the appeal filed by the petitioner challenging the order dated 30/06/2015 passed by the Assistant Registrar of Cooperative Societies has been dismissed. The Assistant Registrar by the order dated 30/06/2015 has directed the petitioner to transfer the share certificate in the name of the respondent no.1 (the applicant before the Assistant Registrar) in terms of Section 109(1) of the Goa Cooperative Societies Act, 2001 (Act, for short).

3. The brief facts are that the respondent no.2 was allotted with three shops bearing no.GS-16, GS-17 and GS-18 in the Goa Housing Board Residential cum Commercial Complex which are premises belonging to the petitioner Society. The respondent no.2 herein was allotted 150 shares bearing distinctive numbers 1101 to 1250 of the petitioner Society. The second respondent has sold the aforesaid three shops with prior permission of the petitioner, as required under Section 108(d) of the Act. The second respondent applied for permission of the petitioner for effecting inter connectivity of the three shops to start a business. The petitioner has granted No Objection Certificate for the same on 20/01/2010. It is contended that in the name of effecting inter connectivity the first petitioner has removed the partition walls between the shops thereby causing structural changes. It is also contended that respondents did not obtain any No Objection Certificate from the statutory authority like the Village Panchayat. The petitioner advised the respondent no.2 to procure a letter from the Goa Housing Board about the structural stability. The Housing Board vide certificate dated 26/10/2010 has certified that the use of the shops for establishment of a gym will not affect the structural stability of the premises. It appears that subsequently Madhava Kamat and Associates have also certified that the structural stability of the building will not be endangered due to removal of the masonry walls of the shops provided that no damage has occurred to any structural load bearing elements such as column/beam, etc. The petitioner, however, did not take any steps

for transfer of the share certificate in favour of the respondent no.1. This prompted the respondent no.1 to approach the Assistant Registrar, seeking a direction to the petitioner to transfer the share certificate. It appears that the Assistant Registrar had issued a notice to the petitioner on 25/06/2013, for the purposes of facilitating his office to decide whether the dispute referred falls within the meaning and purview of Section 83 of the Goa Co-operative Societies Act, 2001. The Assistant Registrar by an order dated 16/09/2014 disallowed the objection raised by the petitioner and held that the dispute is one which falls or touches the business of the Society and the dispute was accordingly admitted. Subsequently, by an order dated 30/06/2015, the petitioner has been directed to transfer the share certificate which order has been confirmed by the Cooperative Tribunal.

4. The learned Counsel for the petitioner has raised two contentions.

Firstly, it is contended that under Rule 117(2) of the Goa Cooperative Societies Rules, 2003 (Rules, for short) the Registrar or his nominee has to record evidence of the parties and no order could be passed without recording such evidence. It is next contended that the changes which the respondents have effected by inter connecting the shops have adversely affected the structural stability of the building.

5. On the contrary, it is submitted by the learned Counsel for the

respondents that the petitioner failed to remain present inspite of notice and, as such, the learned Assistant Registrar was within his powers to proceed ex-parte as provided under Rule 117(3) of the aforesaid Rules. It is submitted that the petitioner had already granted No Objection Certificate for effecting inter connectivity amongst the shops and now they cannot turn around and say that the respondent no.1 is not entitled to get the transfer of share certificate in his name.

6. I have carefully considered the circumstances and the submissions made. It appears that the petitioner - Society on the basis of the application made by the second respondent had granted No Objection Certificate for effecting inter connectivity of the shops. Although it was tried to be argued on behalf of the petitioner that the said permission does not extend to the removal of the partition walls, there is no such condition imposed nor the permission dated 20/10/2010 is qualified in this regard. Nothing prevented the petitioner from qualifying the permission to say that such inter connectivity can be effected, say by opening of doors and not by entire removal of the partition walls. That apart, a perusal of the judgment of the Cooperative Tribunal does not show that such a ground of the changes being beyond the permission granted was raised before the Tribunal. Sub-rule 3 of Rule 117, provides that where any party duly summoned to attend the proceedings fails to appear the Assistant Registrar can decide the dispute ex-parte. In the

present case, it is not in dispute that the petitioner did not remain present before the Assistant Registrar inspite of service of notice. Thus, in my considered view, the said ground would not come to the aid of the petitioner. It further appears that the Goa Housing Board has issued a certificate and not only that there is a certificate by Madhav Kamat and Associates, to the effect that the structural stability of the building will not be endangered due to removal of the masonry walls of the shops. The petitioners have not placed anything on record to show that there is a damage to the structural load bearing elements such as columns/beams, etc. Thus, the contention on behalf of the petitioner that structural stability is adversely effected is without any material on record.

7. For these reasons, I do not find that any case for interference is made out in exercise of supervisory jurisdiction of this Court. Thus the challenge to the order directing transfer of certificate cannot be sustained. The petition is without any merit and is dismissed with no order as to costs. Needless to mention that if there is any other violation, it would be open to the petitioner to take appropriate action in accordance with law and if so advised, after the share certificate is transferred in favour of the respondent no.1.

C. V. BHADANG, J.

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