

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.967 OF 2016

Shreerang Complex Co-op. Hsg. Society's ]  
Co-Op. Association Ltd., ]  
Thane, Through it's President, Steering Committee ]  
Shreerang Shopping Center, Above UCO Bank, ]  
Shreerang Compound Thane (E) 400 601 ]..Petitioner

Versus

- 1) The State of Maharashtra, ]  
Through the Minister for Revenue, ]  
Government of Maharashtra, ]  
First Floor, Mantralaya, Mumbai-400 032. ]
- 2) Divisional Commissioner, (Revenue) ]  
Konkan Bhavan, Mumbai. ]
- 3) Deputy Collector, (Appeal) ]  
Thane District, Thane. ]
- 4) The Sub-Divisional Officer, ]  
Thane Division, 2<sup>nd</sup> Floor, ]  
Collector Office, Thane (W)-400 601. ]
- 5) Shreerang Unit No.1,4,5,6,9,11 to 16, ]  
24 & 25, Cooperative Housing Society Ltd., ]  
Thane ]  
Through: Shashikant Atmaram Parab, ]  
Member, Shreerang Unit No.12, ]  
Cooperative Housing Society Ltd., Thane ]  
R/at: CD 101-D8, Shreerang Complex, Thane. ]
- 6) Vishnu Dadarao Khodvekar ]  
Shreerang Unit No.15 CHS Ltd., ]  
CD-114/C-207, Shreerang Society, ]  
Thane (W)-400 601. ]
- 7) Shamkant Shridhar Desai, ]

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|----------------------------------------|---|
| Shreerang Unit No.2 CHS Ltd.,          | ] |
| Shop No.14, Shreerang Shopping Centre, | ] |
| Shreerang Society, Thane (W)-400 601.  | ] |
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| 8) Arti Ajit Shingare,                 | ] |
| Shreerang Unit No.3 CHS Ltd.,          | ] |
| C/o. Vikas Complex, B-3/801,           | ] |
| Thane (W)-400 601.                     | ] |
|                                        |   |
| 9) Shreyas Nilkanth Khanvilkar,        | ] |
| Shreerang Unit No.8 CHS Ltd.,          | ] |
| C-1-56/5, Shreerang Society,           | ] |
| Thane (W)-400 601.                     | ] |
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| 10) Dhananjay Madhav Kulkarni          | ] |
| Shreerang Unit No.10 CHS Ltd.,         | ] |
| C-1-61/04, Shreerang Society,          | ] |
| Thane (W)-400 601.                     | ] |
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| 11) Raghunath Atmaram Parab            | ] |
| Shreerang Unit No.18 CHS Ltd.,         | ] |
| E-82/13, Shreerang Society,            | ] |
| Thane (W)-400 601.                     | ] |
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| 12) Satishchandra Yeshwant Sawant      | ] |
| Shreerang Unit No.23 CHS Ltd.,         | ] |
| E-123/6, Shreerang Society,            | ] |
| Thane (W)-400 601.                     | ] |
|                                        | ] |
- ..Respondents

Mr. Pralhad Paranjpe i/by Mr. N. N. Pawar for the Petitioner.  
Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 to 4.  
Mrs. Neeta Karnik for the Respondent Nos.5 to 12.

CORAM : R. M. SAVANT, J.  
DATE : 15<sup>th</sup> NOVEMBER, 2016

**ORAL JUDGMENT**

1 Rule. Having regard to the nature of the challenge raised

made returnable forthwith and heard.

2           The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 29.12.2015 passed by the Hon'ble Minister for Revenue, Government of Maharashtra, by which order, the Revision Application filed by the Respondent No.5 herein came to be allowed and resultantly, the order dated 19.12.2014 passed by the Additional Commissioner, Konkan Division in Revision No.578 of 2012 as also the order dated 28.09.2010 passed by the Additional Collector (Appeals) Thane came to be set aside and consequently the rights of the Respondent No.5 herein came to be confirmed.

3           It is not necessary to burden this order with unnecessary details having regard to the nature of the final directions to be issued.

          The genesis of the instant proceedings lie in the bifurcation of the original housing society known as the Shreerang Co-operative Housing Society Ltd. The said society has been bifurcated into 25 unit societies. Each unit society is comprised of the residents of 3 to 4 buildings approximately. It seems that the order bifurcating the societies passed by the concerned Registrar of Co-operative Societies is a subject

matter of challenge by way of a Writ Petition before a Division Bench of this Court which Writ Petition is of the year 1998. However in the context of the present Petition, it is required to be noted that the said bifurcation order has not been stayed, but it seems that the Division Bench has passed an order whereby a machinery has been provided for carrying out redevelopment of the society in so far as Phase-II of the redevelopment is concerned. However this Court is not concerned with the said aspect in the present Petition. It seems that after the bifurcation order came to be passed, the Deputy Registrar, Co-operative Societies, Thane City, addressed a communication dated 07.06.2006 to the Tahsildar, Thane informing the Tahsildar of the bifurcation of the original Shreerang Co-operative Housing Society Ltd. It seems that thereafter further communication dated 31.01.2009 was addressed by the Sub-Divisional Officer, Thane to the Tahsildar, Thane drawing his attention to the bifurcation of the erstwhile Shreerang Co-operative Housing Society Ltd. and that steps were required to be taken to enter the land standing in the name of the Shreerang Co-operative Housing Society, in the names of the said unit societies. The land on which the buildings of the original society are situated are in three villages namely, Thane, Majiwada and Pachpakhadi. It appears that pursuant to the said communication, the land on which the buildings of the original Shreerang Co-operative

Housing Society Ltd. were situated were entered in the name of the respective unit societies. This resulted in the Petitioner herein filing an Appeal before the Additional Collector against the entries made in the name of the said unit societies i.e. Respondent Nos.5 to 12 herein. The said Appeal filed by the Petitioner came to be allowed and resultantly the entries made in favour of the Respondent Nos.5 to 12 i.e. unit societies came to be set aside. The said order passed by the Additional Collector was carried by way of a Revision before the Additional Commissioner, Konkan Division by the Petitioner herein. The said Revision came to be dismissed by the Additional Commissioner, Konkan Division by order dated 19.12.2014. This resulted in the Respondent Nos.5 herein filing a second Revision before the State Government impugning the said order dated 19.12.2014 passed by the Additional Commissioner, which is the instant Revision Application.

4           In so far as the instant Revision Application is concerned, the Petitioner herein was joined as a Respondent No.2 in its capacity of being a proposed society. This description of the Petitioner was flowing out of the proceedings which were filed before the lower authorities i.e. the Additional Collector and the Additional Commissioner, Konkan Division. In so far as the present Revision is concerned, it appears that the same was moved on 13.08.2015 of which no notice apparently seems to have

been given to the Petitioner herein. Pursuant to the hearing which took place on 13.08.2015, a notice dated 24.08.2015 came to be issued to the Petitioner informing the Petitioner that hearing had taken place on 13.08.2015 and as per the directions of the Revisionary Authority i.e. the Hon'ble Minister for Revenue, the Petitioner was directed to file its reply within 15 days. However, significantly no next date of hearing was mentioned in the said notice dated 24.08.2015. In response to the said notice dated 24.08.2015 the Petitioner vide his reply dated 25.08.2015 informed the Revisionary Authority that a copy of the Revision Application has not been furnished to the Petitioner as also that the Petitioner would require eight weeks time to file a reply to the said Revision. A reading of the impugned order discloses that the Revision was taken up for hearing on 29.12.2015 and the Revisionary Authority has allowed the Revision and resultantly, set aside the order dated 13.08.2015 as also the order dated 28.09.2010 passed by the Additional Collector and restored the position in so far as the mutation entries are concerned in the name of the Respondent Nos.5 to 12. As indicated above, it is the said order dated 29.12.2015 passed by the Revisionary Authority which is taken exception to by way of the above Petition.

5                    Heard the Learned Counsel for the parties.

6           The principal contention urged by the Learned Counsel Mr. Pralhad Paranjpe is that the said order dated 29.12.2015 has been passed by the Revisionary Authority without affording a proper opportunity to the Petitioner. In support of the said contention the Learned Counsel seeks to draw this Court's attention to the notice dated 24.08.2015 wherein the next date has not been mentioned as also the fact that vide its reply dated 25.08.2015 the Petitioner had communicated to the office of the Revisionary Authority that the Revision Application has not been furnished to the Petitioner and that the Petitioner requires eight weeks time to file a reply. The Learned Counsel would also submit that the Revisionary Authority has erred in proceeding with the Revision after taking cognizance of the said letter dated 25.08.2015 in as much as the contents of the said letter have been referred to in the impugned order.

7           Per contra, the Learned Counsel Mrs. Neeta Karnik appearing for the Respondent Nos.5 to 12 supports the impugned order dated 29.12.2015. It was the submission of the Learned Counsel that the Petitioner has himself to blame as the Petitioner had made himself scarce by locking the office premises of the erstwhile society and therefore no notice could be served upon the Petitioner. The Learned Counsel also sought to question the locus of the Petitioner to file the above Writ Petition as it is a "proposed" co-operative society. It was also the

submission of the Learned Counsel Mrs. Neeta Karnik that the entries in the revenue record have been made in March 2016 i.e. much prior to any order passed in the above Writ Petition. It was also the submission of Mrs. Neeta Karnik that in so far as the order of bifurcation is concerned, the said order stands and has not been interfered with by this Court since the year 1998.

8           Having heard the Learned Counsel for the parties, I have considered the rival contentions. At the outset, it would be necessary to deal with the contention of the Learned Counsel for the Respondent Nos.5 to 12 as regards the locus-standi of the Petitioner. As indicated hereinabove the Petitioner was served before the Revisionary Authority as a proposed society. The present status of the Petitioner is on account of the order of bifurcation in my view therefore the Petitioner as a proposed society is entitled to maintain the above Writ Petition. As indicated above, the principal contention of the Learned Counsel for the Petitioner is that the impugned order has been passed without affording a proper opportunity to the Petitioner. In the said context the fact that the notice dated 24.08.2015 does not mention the next date of hearing has to be borne in mind. The fact that by letter dated 25.08.2015 the Petitioner had communicated to the office of the Revisionary Authority that the Revision Application was not served upon the Petitioner and that the

Petitioner requires eight weeks time also cannot be lost sight of. However the basic lacuna in the notice if one can say so is that the next date of hearing was not mentioned in the said notice. Hence in so far as the non-appearance of the Petitioner on 29.12.2015 or on the date when the hearing had actually taken place before the Revisionary Authority is concerned, the Petitioner cannot be blamed for the same. It is well settled that an order passed in breach of the principles of natural justice stands vitiated on the said ground. The impugned order is therefore not sustainable and is required to be set aside and the matter is required to be remanded back to the Revisionary Authority.

However the question in the instant case is whether the status-quo ante is required to be restored. In the said context, it is required to be noted that the order bifurcating the original Shreerang Co-operative Housing Society Ltd. into 25 unit societies has not been stayed. Hence the said bifurcation order is in operation. The said bifurcation order has been passed as long back in the year 1998 and that by the communications addressed in the year 2006 and 2009 to the Revenue Authorities were directed to take steps so as to give effect to the bifurcation order in the revenue record. This has been done in March 2016 i.e. before any orders could be passed in the above Petition. Effect of the bifurcation order is that there are now 25 separate unit societies

who would be entitled to the Conveyance of the land beneath the societies and the land appurtenant thereto in terms of the development control regulations applicable. Hence the bifurcation of the said original Shreerang Co-operative Housing Society Ltd. assumes importance in the context of the arrangement which is required to be made pending the hearing of the Revision Application on remand.

9           In view of the fact that the entries have been effected in March 2016 and thereby effect has been given to the bifurcation order, the status-quo ante cannot be restored. Hence even though this Court finds that the order dated 29.12.2015 has been passed without a proper opportunity being afforded to the Petitioner, this Court does not deem it appropriate to set aside the mutation entries which are effected in favour of the Respondent Nos.5 to 12 i.e. the 25 unit societies. Hence though the impugned order dated 29.12.2015 is set aside and the matter is remanded back to the Revisionary Authority for a de-novo consideration of the Revision Application the entries in favour of the Respondent Nos.5 to 12 are maintained. Needless to state that they would be subject to the outcome of the Revision Application on remand. Though various contentions were sought to be urged on behalf of the parties by the respective Counsel, it is not necessary for this Court to delve into the said aspects as it is before the Revisionary Authority that the parties would be

entitled to urge their contentions and it is for the Revisionary Authority to consider the said contentions. The impugned order dated 29.12.2015 is accordingly quashed and set aside and the matter is remanded back to the Revisionary Authority for a de-novo consideration of the Revision Application.

10           The Learned Counsel Mrs. Neeta Karnik appearing for the Respondent Nos.5 to 12 states that a copy of the Revision Application would be handed over to the Advocate on record for the Petitioner within one week from date. Statement accepted. On remand, the matter would come up before the Revisionary Authority i.e. the Respondent No.1 on 29.11.2016. The Petitioner to file its reply on or before 19.12.2016 before the Revisionary Authority. The Learned Counsel for the Respondent Nos.5 to 12 states that the cause title of the Revision Application would be amended so as to join the Respondent Nos.6 to 12 and societies similarly situated as Respondent Nos.6 to 12. The same to be done on or before 19.12.2016. The Learned Counsel for the Petitioner on instructions states that he has no objection to the same.

11           Needless to state that the contentions of the parties are kept open for being urged before the Revisionary Authority. The Revisionary Authority on remand to hear and decide the Revision Application on its

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own merits and latest by 31.03.2017. The fact that the mutation entries are maintained would not be construed as any expression of opinion of this Court on merits. The Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.

**[R.M.SAVANT, J]**