

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1586 OF 2013

M/s. Sadhana Construction Company .. Petitioner  
vs.  
Mr. Dilip M. Wankhede & Ors. .. Respondents

Mr. Girish Paryani for Petitioner.  
Mr. Uday Warunjikar for Respondent Nos. 1 and 3.  
Mr. S. D. Rayrikar – AGP for Respondent No. 2.

**CORAM : M. S. SONAK, J.**  
**DATE: 14 JULY 2016**

**P.C :**

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] Heard Mr. Paryani, learned counsel for petitioner, Mr. Rayrikar, learned AGP for respondent no. 2 and Mr. Warunjikar, learned counsel for respondent nos. 1 and 3. Mr. Warunjikar undertakes to file vakalatnama on behalf of respondent no.3 within a period of one week from today. The undertaking is accepted.

3] The challenge in this petition is to the order dated 27 November 2012 made by the Hon'ble Minister, Housing Department allowing revision petition no. 816 of 2011 under section 154 of the Maharashtra Co-operative Societies Act, 1960 (said Act), which revision petition had been instituted by the respondent no. 1.

4] The respondent no.1 in his capacity as chief promoter of Ram Shyam Co-operative Housing Society had applied for registration of the co-operative society. Such registration was declined by Deputy Registrar and Divisional Joint Registrar, who are the original as well as the appellate authorities under the said Act. Aggrieved by this, the respondent no.1 instituted revision petition no. 816 of 2011 before the Hon'ble Minister, Housing Department, which is the revisional authority in terms of section 154 of the said Act. By the impugned order dated 27 November 2011 the revision petition came to be allowed.

5] The grievance of the petitioner, who is the developer, is that the petitioner was not heard by the Hon'ble Minister before the impugned order was made. This was despite the fact that the petitioner had lodged a caveat in the matter and the petitioner was a party in the proceedings before the Deputy Registrar and the Divisional Joint Registrar.

6] The respondent no. 2 has not filed any reply to this petition contesting the averments that the petitioner was not heard before the impugned order was made. Mr. Warunjikar, learned counsel appearing for the respondent nos. 1 and 3 submits that since the said respondents received the notice, there is no reason to

presume that the petitioner had not received the notice of the hearing.

7] At this stage, it is not possible to proceed on the basis of such presumptions. The petitioner has made a categorical statement that the petitioner was never served with the notice of the hearing. There is no material produced on record to indicate that such notice was indeed served upon the petitioner. The impugned order has reversed the decisions taken by the Deputy Registrar and the Divisional Joint Registrar, which were decisions, in favour of the petitioner. In such circumstances, it appears that there has been a breach in compliance with the principles of natural justice before the impugned order was made by the Hon'ble Minister. On this short ground, the impugned order is liable to be set aside and the same is hereby set aside.

8] Ordinarily once the impugned order is set aside, the registration of the respondent no. 3 society, which is on the basis of the impugned order would also required to be set aside. However, as pointed out by Mr. Warunjikar, the impugned order was made on 27 November 2012 and there was no interim order granted by this court. The respondent no. 3 society has already been registered and is undertaking the day to day functions in relation to the

management and maintenance of the building complex. In such peculiar circumstances, even though, the impugned order is being set aside, it will not be appropriate, at this stage, to direct cancellation of registration of the respondent no. 3 society. That apart, the main grievance of the petitioner appears to be in relation to certain monetary claims which the petitioner has against the promoters of the society. In such circumstances, therefore, the issue of cancellation of the registration already granted can be deferred until the Hon'ble Minister disposes of the revision petition no. 816 of 2011 which has now been remanded for fresh disposal in accordance with law and on its own merits.

- 9] This petition is therefore disposed of with the following order:
- (A) The impugned order dated 27 November 2012 is hereby set aside;
  - (B) Notwithstanding the aforesaid, the registration of the respondent no. 3 society and its functioning shall remain unaffected until disposal of the revision petition no. 816 of 2011 instituted by the respondent no.1 by the Hon'ble Minister;
  - (C) In case, the revision petition is decided against the respondent no.1, this interim arrangement shall operate for a period of four weeks from the date of communication of the

order by the revisional authority;

(D) The Hon'ble Minister is requested to dispose of the revision petition no. 816 of 2011 as expeditiously as possible and if possible, within a period of four months from the date of production of authenticated copy of this order;

(E) It is clarified that this court has not adverted to the merits of the matter and therefore all contentions of all parties are left open for determination by the Hon'ble Minister;

(F) The Hon'ble Minister is requested to dispose of the revision petition in accordance with law and on its own merits without being influenced by the circumstance that the registration of the respondent no. 3 society has been permitted to be continued until disposal of the revision petition;

(G) The parties to appear before the Hon'ble Minister on 5 August 2016 at 3.00 p.m and submit authenticated copy of this order.

(H) Rule is disposed of in the aforesaid terms.

(I) All concerned to act on authenticated copy of this order.

**(M. S. SONAK, J.)**