IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1875 OF 2005

Shri Poornanad Saraswati Co-op.
Housing Society Limited .. Petitioner
vs.
Divisional Joint Registrar (Appeal)
Mumbai & Ors. .. Respondents

Mr. M. J. Jamdar for Petitioner.
Mr. A. R. Metkari – AGP for Respondent Nos. 1 and 2.
Mr. Chaitanya Nikte for Respondent Nos. 3 and 4.

CORAM : M. S. SONAK, J.
Date of Reserving the Judgment : 05 May 2016
Date of Pronouncing the Judgment : 14 June 2016

JUDGMENT :-

1] The challenge in this petition is to the orders dated 19 October 2004 and 3 March 2005 made by the Deputy Registrar (Co-operative Societies) and the Divisional Joint Registrar (Appeals) directing the petitioner society to admit respondent nos. 3 and 4 as members of Shri Poornanad Saraswati Co-op. Housing Society Limited (society).

2] Mr. Jamdar, learned counsel for the petitioner – society had submitted that the appeal instituted by respondent nos. 3 and 4 before the Deputy Registrar (Co-operative Societies) under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (said

Act) was not at all maintainable as the petitioner society vide its resolution dated 7 August 2004, had not rejected the applications made by respondent nos. 3 and 4 for membership, but had merely deferred the decision on this issue, to some further date. Mr. Jamdar, relying upon the phraseology employed by the legislature in enacting sub section (2) of Section 23 of the said Act submitted that an appeal under the said provision is maintainable only if the society refuses membership and not otherwise.

3] Although, the aforesaid contention had been considered and decided against the petitioner society by the Deputy Registrar Co-operative Societies – the appellate authority and the Divisional Joint Registrar (Appeals) – the revisional authority, this Court, rather than let such technical objection prevail, made an order on 29 April 2005 permitting the petitioner society to consider the application of respondent nos. 3 and 4 for membership afresh and to take a suitable decision in that regard. It was however clarified that in case the society decides against respondent nos. 3 and 4, such order can be placed on record in the present petition and the legality of such order will be open to scrutiny in this petition.

4] The order dated 29 April 2005 made in this petition reads thus:

"1. Heard Mr. Keni and Mr. Thakare the learned counsel for the Petitioner-society which is aggrieved by an order passed in Revision Application No. 583 of 2004 by the Divisional Registrar, Co-operative Societies, Mumbai on 3.3.2005. While dismissing the Revision Application, the order passed by the Deputy Registrar Co-operative Societies, D-Zone, Mumbai on 19.10.2004 has been confirmed. The Deputy Registrar allowed the Appeal filed under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 against the Resolution dated 11.8.2004 passed by the Petitioner-society and directed the society to enroll Mrs. Daksha Baxi and Mr. Jawahar Baxi as the members of the Petitioner-Society.

2. The learned counsel for the Society submitted that its membership is given to a new entrant viz. a buyer of any of the flats strictly as per its by-laws and unless the earlier flat holder resigns from the membership, such a membership cannot be transferred. The Resolution dated 7.8.2004 as it appears on the record submitted before this Court shows that the application dated 2.8.2004 submitted by the present Respondent nos. 3 and 4 was kept pending and it was not rejected. The reasons for keeping the application pending have also set out in the minutes and all of them may not be justified. Therefore, the learned counsel for the Petitioner-society stated that the pending application will be considered strictly as per its by-laws and in any case, the Respondent no. 5 has submitted his resignation vide his letter dated 18.8.2004. It is further assured to the Court that the application pending will be decided by 23.5.2005 and strictly as per the by-laws of the society. While noting down this undertaking, it is clarified that the Respondent Nos. 3 and 4

will have to furnish all the particulars within one week from receiving communication from the Petitioner-society so as to prov their eligibility as per the by-laws of the society. The Petitioner shall communicate to the Respondent nos. 3 and 4 any such additional documents / clearances as per the by-laws within one week from today. The final decision of the society so taken by 23.5.2005 shall be communicated to the Respondents Nos. 3 and 4 forthwith.

3. Hence, S.O. to 8.6.2005. It is clarified that in case the society's decision goes against the Respondents Nos. 3 and 4, the order may be brought on record before the next date and the legality of such a decision will be open to scrutiny in this petition.

4. Certified copy of this order is expedited."

(emphasis supplied)

5] In pursuance of the aforesaid order dated 29 April 2005, the petitioner society resolved to deny membership to respondent nos. 3 and 4. The resolution dated 23 May 2005 to this effect has been placed on record. As directed earlier, even the said decision, is open for scrutiny in the present petition. Accordingly, the learned counsel for the petitioner society as well as the learned counsel for respondent nos. 3 and 4 have, without prejudice to their other contentions, made their submissions in the context of the decision dated 23 May 2005.

6] Mr. Jamdar, learned counsel for the petitioner society has made the following submissions in support of the present petition:

(A) That the appeal instituted by respondent nos. 3 and 4 on 9 August 2004 before the Deputy Registrar (Co-operative Societies) under section 23(2) of the said Act, was premature and not maintainable, as by the said date, the petitioner society had not refused membership to respondent nos. 3 and 4. Therefore, the impugned order dated 19 October 2004, made by the Deputy Registrar (Co-operative Societies) is without jurisdiction and the Divisional Joint Registrar (Appeals) failed to exercise jurisdiction vested in him, by not setting aside the impugned order dated 19 October 2004;

(B) That in any case, the petitioner society, in pursuance of the liberty granted by this Court, has refused membership to respondent nos. 3 and 4 vide resolution dated 23 May 2005. In case respondent nos. 3 and 4 are dissatisfied with such decision, then, it is for them to institute appeal against the same under section 23(2) of the said Act. This having not been done, respondent nos. 3 and 4 cannot, at this stage, insist upon admission to the membership of the society;

(C) In any case further, the reasons set out in the resolution dated 23 May 2005 for refusing membership to respondent nos. 3 and 4 are relevant, cogent and germane. Considering the circumstance

that majority of the members of the society are not in favour of admitting respondent nos. 3 and 4 as members of the society, there is no case made out to upset the resolution dated 23 May 2005 and direct the admission of the said respondents to the membership of the society. Mr. Jamdar pointed out that respondent nos. 3 and 4 lacked '*spirit of co-operation*'. This according to him, is evident from the circumstance that respondent nos. 3 and 4 have exhibited disinclination to comply with the rules and procedure of the society and further the said respondents have gone to the extent of instituting civil and criminal proceedings against the office bearers of the society. Mr. Jamdar has submitted that these are legal and valid reasons for declining membership to respondent nos. 3 and 4.

7] Mr. Chaitanya Nikte, learned counsel for respondent nos. 3 and 4 has submitted that membership was refused to respondent nos. 3 and 4 in the meeting held on 7 August 2004. The petitioner society failed to produce the resolution or the minutes of the meeting held on 7 August 2004 either before the Deputy Registrar (Co-operative Societies) or the Divisional Joint Registrar. The statements made by the office bearers of the society before the police were duly produced before the two authorities and in these statements, the office bearers had clearly stated that membership was refused to respondent nos. 3 and 4 in the meeting held on 7

August 2004. Accordingly, Mr. Nikte submitted that the appeal under Section 23(2) of the said Act was very much maintainable and the same was rightly entertained and allowed by the Deputy Registrar (Co-operative Societies). Mr. Nikte, by reference to this Court's order dated 29 April 2005 submitted that the liberty granted to the petitioner society, was only to obviate the necessity to decide the technical objection raised by the petitioner society as to the maintainability of the appeal. In any case, the order dated 29 April 2005 makes it clear that the legality of the decision taken in pursuance of the liberty granted will be open to scrutiny in this petition itself. As such there was no necessity of respondent nos. 3 and 4 again instituting any appeal under section 23 (2) of the said Act in the matter. Mr. Nikte finally submitted that the reasons set out in the resolution dated 23 May 2005 are false, irrelevant and untenable. The mere circumstance that respondent nos. 3 and 4 were forced to and have taken recourse to legal remedies, can hardly be held against respondent nos. 3 and 4. For all these reasons, Mr. Nikte submitted that there is no case made out to interfere with the concurrent findings recorded by the two authorities, particularly considering the limited parameters of judicial review under Article 227 of the Constitution of India.

8] Both the learned counsel relied upon certain decisions, which shall be considered in the course of this judgment and order.

9] Rival contentions, now fall for determination.

10] Sub section (1) of section 22 of the said Act *inter alia* provides that no person shall be admitted as a member of a society except the following, that is to say an individual, who is competent to contract under the Indian Contract Act, 1872. Sub section 1A of section 22 of the said Act however provides that notwithstanding anything contained in sub section (1), the State Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any society or class or societies, by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment as the case may be. There is no dispute in the present case that respondent nos. 3 and 4 qualify for membership to the petitioner society in terms of sub section (1) of

section 22 and further, it is not even the case of the petitioner society that the provisions contained in sub section(1A) to section 22 of the said Act, are in any manner, attracted to the claim of membership by respondent nos. 3 and 4. Sub section (2) of section 22 provides that where a person is refused admission as a member of the society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of receipt of such application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

11] Section 23 of the said Act is entitled *'open membership'.* Sub section (1) to section 23 of the said Act provides that no society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of the said Act and its bye-laws. Sub section (1A) takes care of the contingency where a society refuse to accept the application from

an eligible person for admission as a member. Sub section (2) to section 23 of the said Act provides that any person aggrieved by the decision of a society refusing him admission to the membership, may appeal to the Registrar within a period of sixty days from the date of receipt of the decision of the society. Every such appeal, as far as possible, shall be disposed of by the Registrar within a period of three months from the date of its receipt. Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record reasons for the delay. Sub section (3) to section 23 provides that the decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof. Sub section (4) of section 23 of the said Act concerns agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar. In this case, we are not concerned with such a society.

12] The first objection raised by Mr. Jamdar is to the maintainability of appeal before the Deputy Registrar, really does not survive, if the subsequent developments in the matter are to be taken into consideration. Nevertheless, since Mr. Jamdar has pressed this contention, it is necessary to consider whether such objection came to be correctly rejected by the Deputy Registrar and

the Divisional Joint Registrar exercising appellate and revisional authority under the said Act.

13] At the outset, it must be noted that it does appear that the petitioner society did not produce either before the Deputy Registrar or the Divisional Joint Registrar the copy of the resolution actually adopted by the petitioner society in the special general body meeting held on 7 August 2004. Since, the petitioners had serious objections to the maintainability of the appeal under section 23 (2) on the ground that no decision was ever taken in the meeting of 7 August 2004 to refuse membership to respondent nos. 3 and 4, the least that was expected from the petitioner society was to place a true copy of such resolution before the Deputy Registrar, taking up an appeal under section 23(2) of the said Act, at the earliest instance. The petitioner society, having failed to place on record such resolution before the appellate authority at the earliest instance, cannot, at this stage, insist upon adjudication of the technical objection as to maintainability of the appeal under section 23(2) of the said Act. In any case, the view taken by the two authorities i.e. the appellate authority and the revisional authority on the aspect of maintainability of the appeal, cannot really be said to be vitiated by any error apparent on face of record or jurisdictional

error, so as to warrant interference under Article 227 of the Constitution of India.

14] The two authorities, in the context of maintainability of the appeal have taken into consideration the statements made by the office bearers of the petitioner society before the police that membership was indeed refused to respondent nos. 3 and 4 in the special general body meeting held on 7 August 2004. These statements are incidentally a part of the record and upon perusal of the same, there is really no ambiguity in the statements made by the office bearers of the petitioner society. That apart, the record also indicates that there was other material on record to suggest that membership had in fact been refused. Mr. Jayant Arurkar, the member of the society, from whom respondent nos. 3 and 4 have purchased the premises in question was present at the meeting and has filed an affidavit affirming rejection. The correspondence addressed by the members of the petitioner society, including the letter in which the office bearers have agreed to consider the application for membership made by respondent nos. 3 and 4 again, also constitute sufficient material to sustain the concurrent findings recorded by the two authorities in the matter of refusal of membership. In exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India, it is neither possible nor

permissible to scan the material on record, as if this court was exercising any appellate jurisdiction in the matter. Suffice to note that this is neither a case of *'no evidence'* nor a case of perversity in the record of concurrent findings of facts.

15] In any case, the contention raised by Mr. Jamdar, in the facts and circumstances of the present case, is only a technical. It is quite apparent that the petitioner society is bent upon refusing membership to respondent nos. 3 and 4. In order that the technical objection does not persist, this Court, by its order dated 29 April 2005 granted liberty to the petitioner society to once again consider the application made by respondent nos. 3 and 4 for membership and to take a decision thereon. In pursuance of such order, the general body of the petitioner society has taken a decision, on 23 May 2005, once again, rejecting the application for membership. In these circumstances, it is not possible to interfere with the impugned orders on the basis of the technical objection raised by the petitioner society, particularly since the petitioner society has not been able to make good the same. Jurisdiction under Articles 226 and 227 of the Constitution of India is conceived in equity and this Court, in the exercise of such jurisdiction, is not bound to interfere, merely because the petitioner makes out some case of a technical breach.

16] The issue of admission of respondent nos. 3 and 4 to the membership of the petitioner society is pending since the year 2004. The two authorities under the Act have ruled that the denial of membership by the petitioner society is neither legal nor proper. The petitioner society, without prejudice, was offered opportunity to reconsider this issue in terms of this Court's order dated 29 April 2005. At this stage, therefore, it is not possible to take the view that the appeal instituted by respondent nos. 3 and 4 was either premature or not maintainable under section 23(2) of the said Act. Accordingly, it is not possible to accept Mr. Jamdar's first contention with regard to the very maintainability of the appeal under section 23(2) of the said Act.

17] At this stage, respondent nos. 3 and 4 cannot be relegated to challenge the decision dated 23 May 2005, in terms of which the petitioner society has once again rejected the applications of respondent nos. 3 and 4 to the membership of the petitioner society. The order dated 29 April 2005 made by this Court is quite clear. The order was made, merely in order to afford an opportunity to the petitioner society to consider the issue of membership and in order that the technical objection with regard to the alleged denial of such opportunity and maintainability of the appeal, does not persist. However, this Court, in paragraph 3 of the order dated 29 April 2005

had made it abundantly clear that in case the petitioner society decides against admitting respondent nos. 3 and 4 as its members, such order may be brought on record and the legality thereof will be open to scrutiny in this petition. At this stage, it is both incorrect and unfair on the part of the petitioner society to even urge that its decision dated 23 May 2005 is final or that respondent nos. 3 and 4 should be relegated to some alternate remedy at this point of time.

18] In fact, the issue of examination of the legality of the decision dated 23 May 2005 in this petition itself will arise, only if the petitioner society succeeds in making a case warranting interference with the impugned orders made by the appellate and the revisional authorities. The petitioner society, having failed, to make out any case to warrant interference with the impugned orders, there is really no necessity to once again examine the legality of the decision dated 23 May 2005, as, it is quite clear that the liberty granted to the petitioner society to take such a decision, was subject to further orders in this petition. This is quite clear from the tenor of the order dated 29 April 2005.

19] The contention that the application for membership submitted by respondent nos. 3 and 4 was incomplete or that the same suffered from certain technical defects, is also untenable. Upon

perusal of the provisions of the said Act, rules made thereunder and the bye-laws of the society, it is quite clear that there was substantial compliance on the part of the respondent nos. 3 and 4 as also Mr. Jayant Arurkar, from whom, the said respondents have purchased the premises in question. In such circumstances, there is really no case made out to interfere with the impugned orders made by the appellate and revisional authorities under the said Act.

20] The decision dated 23 May 2005, in the facts and circumstances of the present case, cannot be said to be legal and tenable. It appears that respondent nos. 3 and 4 attempted to move into the premises in question, on the basis of the deeds and documents of transfer obtained by them from Mr. Jayant Arurkar, the member of the petitioner society. On that occasion, it appears that there was some physical altercation between the parties, which laid to institution of civil and criminal proceedings. Besides, respondent nos. 3 and 4 were also per-forced to institute proceedings to secure membership. For these reasons, it cannot be said that respondent nos. 3 and 4 lacked '*spirit of co-operation*'.

21] The decision dated 23 May 2005 also states that the society has been dragged into unnecessary litigation by respondent nos. 3 and 4. Considering that at least two authorities have held in favour

of respondent nos. 3 and 4, it cannot be said that such litigation was either frivolous or unnecessary. It does appear that respondent nos. 3 and 4 had no choice but to litigate in the matter of their admission to the membership of the petitioner society. The reasons stated in the decision dated 23 May 2005, therefore, cannot be regarded as cogent or tenable, in the facts and circumstances of the present case.

22] Another reason set out in the decision dated 23 May 2005 is that the respondent no. 4 has, allegedly, mortgaged the premises in question, without necessary information to the office bearers of the petitioner society and even before, the respondent no. 4 could be enrolled as member of the society. Again, there is no material to substantiate this aspect. In any case, in the peculiar facts and circumstances of the present case, that circumstance by itself, cannot be held to constitute sufficient cause for declining membership.

23] Mr. Jamdar, learned counsel for the petitioner relied upon the decisions of this Court in the case of ***New Sion Co-operative Housing Society Ltd. vs. State of Maharashtra & Ors.***[1] *and* ***President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd. vs. Ramchandra Damodar***

1 2007 (1) Mh.L.J. 416

Umalkar & Ors.[2], to contend that opposition by majority of the members of the society to the admission of respondent nos. 3 and 4 as members of the co-operative society, by itself, constitutes sufficient cause for denying membership. Mr. Jamdar also placed reliance upon the decision in case of ***Banarasi Das Saraf & Ors. vs. Dalmia Dadri Cement Ltd. & Anr***.[3], in support of the very same proposition.

24] In my judgment, the said decisions are of no assistance to the petitioner society considering the peculiar facts and circumstances of the present case. In case of ***New Sion Co-operative Housing Society Ltd***. (supra), this Court, relying upon the decision of the Division Bench in the case of ***President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd***. (supra) remanded the matter to the Divisional Joint Registrar for deciding whether in the facts and circumstances of the said case, there was sufficient cause for denying membership to the applicant concerned.

25] In ***President, Nagarpalika Prathamik Shala Shikshak Servants Co-operative Credit Society Ltd***. (supra), the Division Bench of this Court has held that the circumstance that

2 1967 BCI 56
3 AIR 1959 Punjab 232

overwhelming majority of the members of the society considered the applicant undesirable to be admitted to the membership of the society is a relevant circumstance, for determining whether there exist sufficient cause for denying membership. However, the Division Bench, has not held that the same can be the only consideration in the matter of this nature. Besides, in the facts and circumstances of the said case, there was material on record to suggest that the applicant, while he was a member of another society had indulged in acts of misbehaviour on account of which, the majority members of the society resolved against the admission of the applicant to the membership of the said society. Besides, in paragraph 18 of the said decision it is recorded that the applicant concerned was given full and fair opportunity to explain his case and it is only upon consideration of such explanation that the majority of the members resolved against the admission of the applicant concerned to the membership of the society. Position in the present case is quite different. As such, the decision of the Division Bench is of no assistance to the petitioner society in the peculiar facts and circumstances of the present case.

26] Mr. Jamdar, relying upon the decisions in the case of ***K. Shantharaj & Anr. vs. M. L. Nagaraj & Ors***.[4] and ***Jt. Registrar of***

4 (1997) 6 SCC 37

Cooperative Societies, Kerala vs. T. A. Kuttappan & Ors.[5] submitted that the Registrar is not empowered to enroll the respondent nos. 3 and 4 as members of the petitioner society. The decisions concern the power of an administrator or a special officer appointed to govern the affairs of a society, to enroll new members. Such issue is not even remotely involved in the present case.

27] Mr. Jamdar also relied upon the decision of the Hon'ble Supreme Court in the case of ***Smt. Damyanti Naranga vs. The Union of India & Ors***.[6], to contend that under Articles 19(1)(c) of the Constitution of India freedom of association includes right to associate with persons of one's choice. Again, the issue involved in the said decision was entirely different and therefore the said decision is not at all applicable to the issue involved in the present case.

28] Mr. Jamdar also placed reliance upon the decision in ***State of Maharashtra & Ors. vs. Karvanagar Sahakari Griha Rachana Sanstha Maryadit***[7], to submit that the Registrar cannot issue directions to the cooperative societies to amend their bye-laws to enable plot holders to construct multi storied building with more than one tenement on their plots and to form society of such

5 (2000) 6 SCC 127
6 1971 (1) SCC 678
7 (2000) 9 SCC 295

building owners which would be the members of the tenant – ownership co-operative housing society. In the said decision, it is held that what is in the interest of the society is primarily for the society to decide. Again, this decision is not at all applicable to the issue involved in the present case. It is impermissible to read a stray sentence out of context in support of the claim that the petitioner society has unfettered discretion in the matter of enrollment of members.

29] The decision in the case of ***Zoroastrian Cooperative Housing Society Ltd. & Anr. vs. District Registrar, Co-operative Societies (Urban) & Ors***.[8] is also not applicable to the issue involved in the present case. In the said case, the issue involved concerned the validity of bye-law restricting membership to the members of a particular community.

30] The Respondent nos. 3 and 4 claim to have acquired the premises in question from respondent no. 5 by virtue of a conveyance dated 30 July 2004 registered on 31 July 2004. It is the case of the petitioner society that respondent nos. 3 and 4, even prior to their enrollment as members of the society attempted to shift into the premises in question on 2 August 2004. The record indicates that there was some incident on the said date, as

8 (2005) 5 SCC 632

respondent nos. 3 and 4 were obstructed from moving into the premises in question. Complaints and counter complaints were therefore filed to the concerned police station.

31] On 7 August 2004 special general body meeting of the petitioner society was convened. It is the case of the petitioner society that decision was taken to defer the issue of admission of respondent nos. 3 and 4 to the membership of the petitioner society as the forms submitted by respondent nos. 3, 4 and 5 were incomplete. Respondent nos. 3 and 4 preferred appeal under section 23(2) of the said Act to the Deputy Registrar on 9 August 2004, which was allowed vide impugned order dated 19 October 2004. The revision instituted by the petitioner society before the Divisional Joint Registrar was dismissed on 3 March 2005.

32] As noted earlier, the two Authorities, on the basis of material before them, have held that membership was refused to respondent nos. 3 and 4 in the meeting held on 7 August 2004. There is no error apparent on face of record or jurisdictional error in entertaining the appeal under section 23(2) of the said Act. In the facts and circumstances of the present case, the technical objection that the decision was only deferred and therefore, no appeal was maintainable under section 23(2) of the said Act cannot be

accepted. In fact, in the revision petition instituted by the petitioner society, no such clear ground was also raised by the petitioner society. The circumstances on record clearly indicate that the petitioner society was determined not to enroll respondent nos. 3 and 4 as members of the society. There was substantial compliance on the part of respondent nos. 3, 4, 5 and 6, in the matter of their applications seeking membership. The reasons set out in the decision dated 23 May 2005, which in any case, was in pursuance of the limited liberty granted by this Court are in the nature of an after thought. In any case, the same do not constitute sufficient cause for denying membership.

33] In case of ***Cumballa Co-operative Housing Society vs. Kavaldeep Gandhioke & Ors***.[9], the Division Bench of this Court upheld the decisions of the authorities under the said Act to the effect that there was no sufficient cause for denying membership on the ground that the gift deed by which the applicant claim to have acquired the premises in question was not genuine or that a proper gift tax or stamp duty had not been paid. The Division Bench of this Court held that the society cannot for extraneous reasons refuse membership to eligible persons.

9 2001 SCC Online Bom 830

34] In the case of ***Sneh Sadan Co-op. Hsg. Soc. Ltd. vs. State of Maharashtra & Ors***.[10], this Court has held that reasons like failure to obtain NOC for sale, submission of incomplete documents or the pendency of dispute between the society and the purchaser, by itself, cannot be grounds to deny membership. This Court has held that denial of membership must be based upon cogent material and not on whims and fancies.

35] In the course of hearing of this petition, considering the circumstance that respondent nos. 4 and 5 have been staying in the premises in question for last twelve years or thereabouts, the parties were called upon to explore the possibility of settling the matter amicably. The respondent nos. 3 and 4, without prejudice to their rights and contentions, had offered to unconditionally withdraw the civil and criminal proceedings instituted by them and further, even offered some reasonable amount to be determined by the Court to the society towards litigation expenses and as a goodwill gesture. The petitioner society however made a demand for Rs.50,00,000/-, which the respondent nos. 3 and 4 were not willing to comply with.

36] For all the aforesaid reasons, in my judgment, there is no case made out by the petitioner society to warrant interference with

10 AIR 2004 Bombay 315

the impugned orders. This petition is therefore dismissed. Rule is discharged. The interim order is vacated. There shall however, be no order as to costs.

(M. S. SONAK, J.)

37] At this stage, Mr. Jamdar, learned counsel for the petitioner, prays for extension of the interim relief by a period of eight weeks from today. Taking into consideration the circumstances and that the interim order has been in operation for quite some time, the same is extended by a period of eight weeks from today.

(M. S. SONAK, J.)

Chandka

`