

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3586 OF 2015

Reginaldo D'souza

.....Petitioner

V/s.

State of Maharashtra and Ors.

.....Respondents

* * * * *

Mr. M.C. Dixit, Advocate for the petitioner.

Ms. M.S. Bane, AGP for the State, respondent no.1.

Ms. Sukeshi Bhandari, Advocate for respondent no.4.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 5TH JULY, 2016.

P.C. :-

- 1). This petition challenges the order dated 16th September, 2014 by which the Hon'ble Minister for Co-operation allowed the Revision Application No. 236 of 2014 and set aside the order of the Divisional Joint Registrar dated 12th April, 2013 by which the petitioner was directed to be made a Member of respondent no.4, Society.
- 2). The petitioner had made an application to the Assistant Registrar of Co-operative Societies for a direction to respondent no.4 for making him a member of the Society. The Assistant Registrar by his order dated 9th April, 2012 dismissed his

application stating that, there are no premises available to be allotted to the petitioner, if the petitioner is made a Member of the Society. That order was challenged by the petitioner before the Divisional Joint Registrar by preferring an appeal. The Divisional Joint Registrar allowed that appeal by his order dated 12th April, 2013 which was further challenged by respondent no.4 before the Hon'ble Minister.

3). The petitioner has based his claim to be a Member of respondent no.4, Society on the agreement of sale dated 4th March, 1990 between his mother and one, M/s. B. Vijay & Co., the developer of the property at Plot No.41/B, CTS No. 226, 226/1 to 5 situate at "Aurola Cottage" at Malad (West), Mumbai-64. Under that agreement, the mother of the petitioner was to be given a permanent alternate accommodation at Flat No.2/A admeasuring 204 sq.ft on the ground floor of the proposed building Orlem Apartments to be constructed on Plot No.41/B. The mother of the petitioner died in the year 2009. During her lifetime, she filed no proceedings for specific performance of the agreement dated 4th March, 1990 against the Developer.

4). The facts disclosed by the record are that, there was a chawl by name "Aurola Cottage" standing on CTS N. 226 and 226/1 to 5 wherein four tenants were residing. The two owners of the property agreed to sell the property along with development rights to one Gohil and Chawda who in turn entered into development rights with M/s. Vijay & Co. The owners, in addition to monetary consideration were entitled to

two flats in the building to be constructed at the site of the chawl and the tenants were to get premises in lieu of the demised premises. M/s. Vijay & Co. got the plans sanctioned but was unable to complete the construction. In the year 1991, it assigned the rights to M/s. Lourdes Enterprises. But that builder also left the work incomplete. The occupants of the chawl collected together and completed the construction for themselves. The building of respondent no.4 consists of ground plus three floors with total 8 tenements. It is not the case of the petitioner that, he had either contributed to the construction of the building or had staked a claim therein in any way. Consequently, there were no premises available in the building constructed for the mother of the petitioner. Over the period of time, the building of respondent no.4 became old and the property is now being redeveloped. At this stage, the petitioner made an application for the first time to be joined as a Member of the Society.

5). The impugned order holds that, since there are no premises in occupation of the petitioner, there was no question of the petitioner becoming a Member of the Society. The petitioner has not been able to point out that, there is any vacant premises kept in the building for his benefit. The petitioner only harps upon the agreement with the Developer for the purpose. Hence, the impugned order is completely justified. Hence, the petition is dismissed.