

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 91 OF 2016
IN
WRIT PETITION NO. 3952 OF 2015

Sea Face Park Cooperative Housing
Society Ltd.

.. Petitioner

vs.

State of Maharashtra and ors.

.. Respondents

Mr. A.Y. Sakhare, Senior Advocate a/w. Mr. Siddhesh Bhole and Ms
Gauri Vaidya i/b Mr. Siddhesh Bhole for the Petitioner.

Mr. S.D. Rayrikar, AGP for Respondent Nos.1 to 3.

Mr. Sujit K. Bhattacharya with Mr. Nitin G. Raut for Respondent
Nos.4 and 5.

CORAM : M. S. SONAK, J.

DATE : 21 JULY 2016.

P.C. :-

1] This petition seeks review of the order dated 24 February 2016, to the extent the same denies the interim relief to the petitioner herein.

2] Mr. A.Y. Sakhare, learned senior advocate for the review petitioner, has submitted that this Court ought not to have made reference to the provisions contained in Article 243-ZT of the Constitution of India, since the amendment by which, the said provisions came to be introduced in the Constitution of India has already been struck down by the Gujarat High Court in case of

Rajendra Shah Vs. Union of India – 1698 Gujrat Law Reporter Vol 54(2). Mr. Sakhare submitted that by virtue of the decision of the Hon'ble Apex Court in case of ***Kusum Ingots & Alloys Ltd. Vs. Union of India and another – (2004) 6 SCC 254***, the said article can no longer be said to be a part of the Constitution of India. Further, Mr. Sakhare submitted that communications dated 13 March 2009 and 30 November 2012 were never received by the petitioner society and in any case, said communications cannot be regarded as directions under Section 79-A of the Maharashtra Cooperative Societies Act, 1960 (Said Act). Finally, Mr. Sakhare submitted that even if the communications are regarded as directions under Section 79-A of the said Act, as long as the procedure prescribed under Section 14 of the said Act is not followed, there can neither be any amendment to the bye-laws of the society nor can the model bye-laws apply. Mr. Sakhare submitted that non-consideration of these vital aspects constitute errors apparent on face of record and the decision to decline interim relief is liable to be reviewed.

3] At the outset, it must be noted that the main petition has been admitted. For reasons recorded in the order dated 24 February 2016,

the respondent Nos.4 and 5 have been directed to be enrolled as members of the society, subject of course to the final orders that may be made in the petition. It is also clarified that respondent Nos.4 and 5 shall not claim any equities at a later date.

4] The contentions raised by Mr. Sakhare, virtually amount to re-arguing the matter under the guise of institution of review petition. The review petition, is neither some opportunity to reargue the case nor is it an appeal in disguise. In fact, the petitioner had preferred a special leave petition against the order dated 24 February 2016, but, the same was dismissed as withdrawn. The order dated 18 April 2016, by which, leave was granted to withdraw the special leave petition, records the contention raised by the learned counsel appearing on behalf of the petitioner herein that no notice was received by the petitioner under Section 79-A of the Act and that it proposes to seek review of the order impugned. Today, apart from contending that no such notice was issued, several other grounds have been pressed for in support of this review petition. Such grounds, were duly considered, with the gravity, which is due at the stage of deciding the issue of interim relief in the order dated 24 February 2016. This is not a case where the interim relief has been

declined entirely relying upon the provisions in Article 243-ZT of the Constitution of India. Besides, this is also not the a case where the enrollment of respondent Nos.4 and 5 came to be directed by the authorities under said Act, merely relying upon the directions under Section 79-A of the said Act. The bare and self-serving contentions that no notice under Section 79-A of the said Act was never received by the petitioner society is not backed or supported either by any material on record or by reference to contemporaneous circumstances. In any case, this is not a some ground for seeking a review.

5] Therefore, upon consideration of the aforesaid, there is no case made out for exercise of review jurisdiction. The review petition is accordingly, dismissed.

6] There shall, however, be no order as to costs.

(M. S. SONAK, J.)