

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 6744 OF 2016

New Sterling Centre Commercial
Premises Co-op. Society Ltd.,
Sterling Centre, Dr. Annie Besant Road,
Worli, Mumbai – 400 018. ... Petitioner

v/s

M/s. Acrow India Ltd.,
New Sterling Centre Commercial
Premises Co-op. Society Ltd.,
Sterling Centre, Dr. Annie Besant Road,
Worli, Mumbai – 400 018. ... Respondents

Mr. S. M. Gorwadkar, senior advocate along with Niranjan Mogre for the petitioner.

Mr. Swapnil Gupte i/by Hariani & Co. for Resp. No.1.

Mr. N. A. Bhadrashetye along with Haresh Shivdasani for Respondent Nos. 2 and 3.

Coram: N.M. Jamdar, J.

Dated: 28 September 2016

ORAL ORDER:

Rule. Rule made returnable forthwith. Learned counsel for the Respondents waive service. By consent of parties, taken up for final disposal.

2 Heard learned counsel for the parties.

3 The Petitioner is a Co-operative Society and Respondent No.1
was the member of the Petitioner Society. Respondent Nos.2 and 3
have purchased the property in question from Respondent No.1.
There is a dispute between the Petitioner Society and the
Respondents as to whether the transaction entered into by
Respondent No.1 in favour of Respondent Nos.2 and 3 is in breach
of bye-laws or otherwise. In this dispute, decision was given by the
Deputy Registrar, Cooperative Societies, under Section 23(2) of the
Maharashtra Cooperative Societies Act, 1960, on 31 March 2016.
The Deputy Registrar held against the Petitioner and directed that
Respondent Nos.2 and 3 be joined as members of the Petitioner
Society. The Petitioner Society thereafter filed two revision
applications being Revision Application No.205 of 2016 in the case
of Respondent No.2 and Revision Application No.206 of 2016
concerning Respondent No.3. In these revision applications an order
of status-quo was granted.

4 The present proceedings arise from Case No.53 of 2016, filed
in the Cooperative court, in which the Petitioners had sought a
declaration and injunction that the Respondents should not carry out
any repair work, renovation, addition and alterations, without
permission of the Petitioner Society, following the planning law as

well as the bye-laws. In this dispute, an application for temporary injunction was taken out below Exh.5. The learned Cooperative Court Judge refused to grant injunction to the Petitioner Society. Thereafter, Appeal No.45 of 2016 was filed by the Petitioner Society, which has been dismissed by the impugned order dated 20 May 2016. Thereafter the present petition is filed.

5 On 24 June 2016, a detailed order came to be passed by the learned Single Judge of this Court noting that the dispute whether the repairs are in the nature of tenantable repairs or structural repairs. By consent of parties, an Architect from the panel of this Court was appointed to inspect the premises and submit a report. The Architect has submitted his report. The Respondents have also filed their reply.

6 When this petition was preferred, the revision applications filed by the Petitioner Society before the Divisional Joint Registrar, were pending wherein the issue of membership was being adjudicated. The learned counsel for the Respondents has placed on record the order passed in the revision applications on 2 August 2016, wherein the Divisional Joint Registrar has set aside the order of the Deputy Registrar and has remanded the proceedings for fresh consideration. The Divisional Joint Registrar has held that since the orders were passed by the Deputy Registrar were without hearing the Petitioner Society and principles of natural justice need to be extended to the Petitioner Society, they be heard before deciding the case on merits.

7 Therefore the situation at present is that the order passed in favour of Respondent Nos.2 and 3 directing them to be joined as members, has been set aside and the matter is being decided on merits afresh by the Registrar. The report of the Architect appointed by this Court has been placed on record wherein the learned counsel for the parties have sought to advance various contentions, which involve adjudication of facts. The report of the Architect was not part of the proceedings before the Court below and the arguments based on this report which will entail factual adjudication will have to be done for the first time in this writ petition. In view of these two developments, it will be appropriate that the issue of temporary injunction is considered afresh by the learned Cooperative Court Judge. The learned counsel for the parties also suggest this course of action.

8 Accordingly, the impugned orders passed by the learned Cooperative Court Judge dated 11 April 2016 and the Cooperative Appellate Court dated 28 May 2016, are quashed and set aside. The application below Exh.5 stands restored to the file of the learned Cooperative Court Judge.

9 Parties will appear before the Cooperative Court Judge on 18 October 2016, which is the next date assigned to the matter. All contentions of the parties, on law and facts, are kept open.

10 Liberty to the parties to amend their pleadings in view of subsequent events, if necessary.

11 The learned Cooperative Court will make an endeavour to dispose of the application below Exh.5, as early as possible.

(N. M. Jamdar, J.)