

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO.17857 OF 2015

Rajendra M. Gulekar and Anr.] ... Petitioners

Versus

Shree Ganesh Apartment Co-Operative]
Housing Society Ltd. and Ors.] ... Respondents

Mr. A. R. Gole for Petitioners.

Mrs. M. S. Bane, 'B' Panel Counsel for Respondent Nos.4 and 5.

CORAM :- M. S. SONAK, J.

DATE :- JANUARY 18, 2016

P. C. :-

1. The challenge in this petition is to the order dated 22/06/2015 made by the Divisional Joint Registrar. In fact, by the impugned Judgment and Order, Revision Application No.280 of 2010 instituted by the petitioners came to be partly allowed and the order dated 30/06/2010 made by the Deputy Registrar, Co-Operative Societies, came to be set aside. The petitioners are obviously not aggrieved by this portion of the order. The petitioners however are aggrieved by the remand to the Deputy Registrar for reconsideration and decision on merits.

2. Mr. Gole, learned Counsel for petitioners, has submitted that if the entire order dated 22/06/2015 is perused, there is absolutely no reason as to why the matter was required to be remanded to the Deputy Registrar. He submits that all the findings are in favour of the petitioners and therefore, the revision application instituted by the petitioners ought to have been allowed in its entirety and there was absolutely no reason for remand. Mr. Gole has contended that issue of heirship of Ms. Tilottama Gokarna is neither a matter of concern, insofar as the petitioners are concerned, nor is it an issue which was required to be re-decided by the Deputy Registrar. For these reasons, Mr. Gole submitted that the direction for remand is liable to be quashed.

3. Having perused the impugned Judgment and Order, as also the record, it transpires that the suit property was agreed to be purchased by Rajendra M. Gulekar, Sheila R. Gulekar and Ms. Tilottama Gokarna. Therefore, the said three persons applied for membership of the society. Unfortunately, Ms. Tilottama Gokarna has since expired and Mr. Satish Gokarna and Mr. Umesh Phatarphekar who claim to be successors of said Ms. Tilottama Gokarna, have raised certain objections and urged that their names be also recorded.

4. The impugned Judgment and Order rightly records that for the purpose of proceeding under the Maharashtra Co-Operative Societies Act, 1960 ('said Act'), mere grant of status of membership to any person, does not, in any manner, affect the right, title, interest or

share of any other party to the property in question. Such right to title, interest, share, if any, does not either get validated or stands extinguished in terms of the orders made under the said Act at the stage of inclusion or exclusion of name of any person as member of the society. Nevertheless, the fact remains that the original application was made by the petitioner and late Ms. Tilottama Gokarna. Therefore, the issue as to the names which will have to be entered as members, now that Ms. Tilottama Gokarna has expired, is an issue which has rightly been remanded to the Deputy Registrar. No doubt, the Deputy Registrar will decide this matter in accordance with the observations made in the impugned Judgment and Order. Further, considering that the application of the petitioner is pending for considerable period, it will be appropriate if the Deputy Registrar is directed to dispose of all the proceedings in accordance with law and on its own merits as expeditiously as possible and in any case, within a period of three months from the date of receipt of authenticated copy of this order.

5. Accordingly, this petition is not entertained. However, the Deputy Registrar, C.S. G/N Ward, Mumbai, is directed to dispose of the proceedings remanded to it as expeditiously as possible and in any case, within a period of three months from the date of production of authenticated copy of this order.

6. The petitioners are directed to appear before the Deputy Registrar on 28/01/2016 at 3.00 p.m. and produce authenticated copy

of this order. The petitioners to serve notice upon the respondent nos.1, 2 and 3 in this petition, insofar as the appearance before the Deputy Registrar on 28/01/2016 is concerned. In any case, the Deputy Registrar to issue notices to respondent nos.1, 2 and 3 and hear all the parties before disposing of the proceedings remanded to it, in accordance with law and on their own merits.

7. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)