

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3490 OF 1998

Shri. Naeem A.R. Hakim
Age : 40 years, Occ.: Service,
of Mumbai, Indian Inhabitant,
Residing at Hirji Govindji Blocks, C/14,
2nd Floor, Behind Nagpada Police
Hospital, Sophia Zuber Marg,
Nagpada, Mumbai- 400 008

...Petitioner

V/s.

- 1 Gorai Golden Sands Co-op.
Hsg. Society Ltd.,
M-20 MNO Apartments,
Varsova, Mumbai – 400 061.
- 2 The State of Maharashtra
through Principal Secretary
Ministry of Co-operation and Textile
Department, Government of Maharashtra
- 3 The Divisional Joint Registrar,
Co-operative Societies, M.D. (Appeals),
Mumbai, having his office at Malhotra House,
6th Floor, Opposite G.P.O.
Mumbai-400 001.
- 4 Dr. V. S. Phad,
Assistant Registrar, Co-operative
Societies (Co-operative Cell)
Bombay Housing and Area Development
Board, Griha Nirman Bhavan, Bandra (East)
Mumbai 400 051.

5 Shri. Anant S. Gawli, Adult
Occ. : Not known,
R/o. B-505, Gorai Golden
Sands Co-op. Hsg. Socy. Ltd.
At Plot No. 14, RSC-48,
Gorai II, Borivali (W), Mumbai-40092.

...Respondents

* * * * *

Mr. R. R. Arolkar a/w Ms. Afshan Goghavi, Advocate for the petitioner.

Mr. M. R. Phal, Advocate for respondent no.1.

Mr. A. R. Metkar, AGP for respondents no.2 to 4.

Mr. Subhash Dhadge, Advocate for respondent no.5.

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

DATED :- 23rd JUNE, 2016.

JUDGMENT :-

1 This petition, as filed originally, was to challenge the order dated 19th February, 1998 by which respondent no.2, the State of Maharashtra dismissed the petitioner's appeal preferred under Section 152 of the Maharashtra Co-operative Societies Act, by the Divisional Joint Registrar, Co-operative Societies M.D. (Appeals), Mumbai. Later, the petitioner amended the petition to implead respondent no.5 and to seek directions against

respondent no.5 to vacate Flat No. B-505 in the building of respondent no.1, Society and direct the Society to cancel his membership and allot the Flat to the petitioner by admitting him as a Member of the Society.

2 The brief factual background of the petition is as follows :

 The petitioner was a founder member of respondent no.1, Society. On 24th July, 1994, the first meeting of the Society took place, in which according to him, he alongwith four persons were appointed as the members of the Ad-hoc Managing Committee. The other members of the Society claimed that, by a meeting conducted on the same day, a different Managing Committee of respondent no.1 was formed which actually took on the work of development of the property. The petitioner had, on the basis of the Resolution relied upon by him, written to the Assistant Registrar of Co-operative Housing Society and the Assistant Registrar by his letter dated 17th September, 1994 permitted him to proceed to look after the affairs of the Society. Later, the petitioner had raised a dispute as regards the formation of the Managing Committee of the above members being Case C.C. No.IV/371/94. That dispute was dismissed on 16th October, 1995. The petitioner did not carry the order any further, which means, he accepted the position, that it is the other members of respondent no.1, who were elected as Managing Committee members.

3 On 17th October, 1996, respondent no.1 passed a Resolution expelling the petitioner on the ground that, he had conducted several activities which were detrimental to the interest of the Society. He had also embroiled the Society into several litigations relating to the first General Body meeting, challenging the election of the Managing Committee and making various complaints to various authorities. Therefore, respondent no.1 in it's meeting of the Managing Committee resolved that the petitioner be expelled under Section 35 of the Maharashtra Co-operative Societies Act, 1960 Rules 28 and 29 of the Maharashtra Co-operative Societies Rules, 1961 and By-Law 12 of the By-Laws of the Society from membership of the Society and the proposal be placed before the Special General Body Meeting of the Society with 30 days notice to all the members. Accordingly, the petitioner was served with the notice dated 25th September, 1996. Thereafter, respondent no.1 filed Application No.9 for confirmation of expulsion by the Registrar of the Co-operative Societies. The petitioner was served with the notice of the proceedings. He appeared through an Advocate and after due hearing to him, the Assistant Registrar, Co-operative Societies by his order dated 12th May, 1997 allowed the application and expelled the petitioner from the membership of respondent no.1, Society. The order notes that in his written statement, the petitioner had, instead of defending and restricting his reply to the charge against him had chosen to state entirely new facts as regards respondent no.1,

Society and the construction of the building by the Society and made counter allegations. It appears that, his claim before the Assistant Registrar, was that respondent no.1 had not given him notice of 30 days, which is required to be given under Rule 29 of the Maharashtra Co-operative Societies Rules. The Assistant Registrar rejected the contention since the date of the notice was of 25th September, 1996 and the Special General Body meeting in which resolution of expulsion was passed was dated 27th October, 1996. The Assistant Registrar further observed in the order that :

“Both from the point of view of merit as well as from the point of view of legal requirements, I do not find any case or merit in the submissions of the member who has chosen a war path to settle his personal score against the Secretary and the other office bearers of the Society and ultimately this is adversely affecting the completion of the project and therefore I have no hesitation to pass an order approving the expulsion.”

4 Being aggrieved by the order, the petitioner had preferred appeal being Appeal No.124/1997 under Section 152 of the Maharashtra Co-operative Societies Act, 1960. The Appeal was dismissed by the impugned order dtd. 19th February, 1998. In that appeal, the Appellate Authority has held that in respect of the approval given by respondent no.2 to the expulsion of the petitioner, he had been given patient hearing and complete opportunity to put forward his defence. It also noted that the petitioner had filed his written reply and written submissions

before the Assistant Registrar at the time of hearing of the proceedings of expulsion. Thus due procedure as contemplated under the bye-laws had been followed and the petitioner had sufficient opportunity to putforth his defence.

5 It appears that the petitioner had moved an application in Appeal No.124 of 1997 seeking interim reliefs of stay of the order of expulsion with an argument that, if the stay is not granted, the petitioner will be deprived of his rights to the property and the flat assigned to him would be transferred to someone who would be accepted as a Member in his place. The Joint Registrar had dismissed the application by his order dated 8th September, 1997 recording the statement on behalf of respondent no.1 that, it had already admitted one, Rathod as a Member in the place of the petitioner who had substantially contributed towards the membership and that respondent no.1 had already refunded to the petitioner the amount of Rs.77,187/- by way of demand draft in the month of October, 1996. The petitioner had refused to accept the draft. Despite this information available to the petitioner, when this petition was filed on 16th June, 1998, the petitioner did not seek to implead, Rathod as a party respondent thereto and to ask for appropriate reliefs. The petition came to be amended on 24th September, 2008 pursuant to the order dated 15th September, 2008 to implead respondent no.5 herein to the petition and to seek relief against him as regards the membership of respondent no.1 and possession of the flat allotted

to him. This respondent has filed his affidavit-in-reply, in which he states that he was infact made a member of respondent no.1-Society, in the year 2001 and his membership was accepted by MHADA by its letter dated 10th September, 2001. The letter specifically refers to the increase in the membership of respondent no.1 from 24 to 50 and that with the membership of respondent no.5, the total members of respondent no.1 would be 43. This would mean that respondent no.5 was the 43rd member of respondent no.1-Society.

6 The only ground on which the petitioner seeks to challenge the impugned order is the ground of denial of opportunity of hearing to him by non-compliance with Rules 28 and 29 of the Maharashtra Co-operative Societies Rules. Rule 29 requires that when a member of the Society proposes to bring a Resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the society. On receipt of notice or when the Committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda in the next General Body Meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the General Body Meetings to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. According to respondent no.1, it had forwarded copy of the

Resolution dated 25th September, 1996 to the petitioner and the resolution to expel the petitioner was passed in the General Body Meeting held on 27th October, 1996. The Assistant Registrar, Co-operative Societies, while confirming the expulsion of the petitioner, by taking the two dates into consideration held that the requirement of one month's notice under Rule 29 of Maharashtra Co-operative Societies Rules stands complied with and there is no merit in the complaint of inadequate notice. The Appellate Authority i.e. the Divisional Joint Registrar refers to the same in the order. Mr. Arolkar, the learned advocate for the petitioner, however points out that "on going from the relevant record", the Divisional Joint Registrar has expressed opinion that respondent no.1-Society and respondent no.2, the authority have not followed "the provision and procedure" of expulsion of members. This finding given is not on account of any inadequacy of the notice. In fact, there are no reasons stated for this opinion expressed. But later the Divisional Joint Registrar confirms the order under appeal by saying that the conclusion arrived at by respondent no.1, Society is proper and it has followed due process of law as contemplated under the Act and the By-laws. Also that, the petitioner was given sufficient opportunity to put up his defence.

7 In my opinion, on careful reading of the impugned order, it cannot be said that, there is a finding given therein that there was any discrepancy in the notice given to the petitioner. The impugned order, which is not very happily worded infact

indicates that more than the mechanical, meticulous following the procedure and the duration of the notice, what was required to be done by the Assistant Registrar was to take judicious decision while granting approval to the Resolution of expulsion by going into the allegations against the member and enquiry into it in detail. Perusal of the order of the Assistant Registrar shows that he has considered the details of the allegations made by respondent no.1, Society. In that circumstance, in my opinion, there is no merit in the challenge to the impugned order. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)