

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10745 OF 2015**

The Panvel Industrial Co-operative Estate Ltd.

..Petitioner

Vs.

**The State of Maharashtra through
the Secretary & Ors.**

..Respondents

Mr. G. S. Godbole i/b Mr. P. M. Tilak for the Petitioner

Mr. S. B. Kalel AGP for the Respondent Nos.1 to 3

Mr. M. R. Phal for the Respondent No.4

CORAM : R. M. SAVANT, J.

DATE : 13th DECEMBER, 2016

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 23-9-2014 passed by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra, by which order, the Revision Application filed by the Petitioner came to be dismissed and resultantly, the order dated 19-6-2009 passed by the Joint Registrar, Co-operative Societies, (Directorate of Industries) came to be confirmed.

2 The Petitioner is an Industrial Co-operative Society which comprises of the plot holders who have Industrial Units on the plots of land in respect of which a sub-lease has been created by the Petitioner in their favour. The Petitioner is an allottee of a plot of land from the State Government which

allotment has been made in terms of the lease dated 26-11-1969 which has been executed between the Petitioner and the Government of Maharashtra through the Industries Department. One of the conditions of the said lease is that the Petitioner is prohibited from assigning, transferring or under-letting the demised premises or any part thereof or any interest therein or in any part thereof without the previous consent in writing of the lessor i.e. the State Government. In so far as the sub-lease between the Petitioner and its unit holders is concerned and more especially the Respondent No. 5, clause (n) of the said sub-lease is material in the context of the present Petition and is reproduced herein under :

“(n) Not to assign, transfer or under-let the demised premises or any part thereof or any interest therein in any part thereof without previous consent in writing of the Lessor.”

The Respondent No.5 herein as indicated above was granted a sub-lease by the Petitioner by agreement dated 25-3-1998. The Respondent No.5 had its manufacturing unit on the said plot of land. It seems that the Respondent No.5 had availed of financial assistance from the Bank of Maharashtra in respect of which financial assistance it had committed a default resulting in proceedings being initiated by the Bank of Maharashtra before the concerned Debt Recovery Tribunal (DRT) for recovery of the outstanding amount as a consequence of which a notice came to be issued by

the DRT for issuing proclamation of sale in respect of the property which was plot No.67 admeasuring 785.31 sq.mtrs. situated in the Petitioner society i.e. the plot of the Respondent No.5. It seems that pursuant to the said sale proclamation, the Respondent No.5 and Respondent No. 4 herein entered into an agreement in respect of the plot of land as a consequence of which the Respondent No.4 was to deposit an amount of Rs.16.69 lacs with the Bank of Maharashtra and the balance remaining i.e. the amount of Rs.3.81 lacs was to be paid by the Respondent No.5. The Respondent No.5 therefore approached the Bank of Maharashtra with a proposal for one time settlement which proposal was dated 11-3-2004. The said proposal was accepted by the Bank of Maharashtra vide its letter dated 26-3-2004 in which letter the terms and conditions of the acceptance were mentioned. It was mentioned in clause (2) of the said letter that the Respondent No.4 to pay the amount of Rs.16.69 lacs directly to it and that the Bank did not have any objection to sell the factory plant and building i.e. plot No.67 in the Petitioner Co-operative Estate to the Respondent No.4. It was further stated that the Bank is agreeable to release the documents of title of the property in its possession on the receipt of the entire compromise proposal.

3 To facilitate the said one time settlement, the Respondent No.5 and the Respondent No.4 entered into a Deed of Assignment dated 24-8-2006. However, prior thereto the Respondent No.5 vide its letter dated 6-1-2005

addressed to the Petitioner society had sought permission for transfer of the said plot No.67 and the 10 shares held by it in favour of the Respondent No.4. It was stated in the said letter by the Respondent No.5 that it had entered into an agreement with the Respondent No.4 in respect of the said plot of land. The said letter was followed by the letter dated 10-1-2005 of the Respondent No.4 in which letter the Respondent No.4 informed the Petitioner society that it is ready to comply with the necessary formalities to complete the transaction with the society. The said letter dated 6-1-2005 addressed by the Respondent No.5 was replied to by the Petitioner by letter dated 5-3-2005. It was stated in the said letter that the application for transfer of the plot will be taken up for consideration after the Respondent No.5 complies with the three conditions mentioned therein. In so far as the three conditions are concerned, the first condition was that the application was signed by only one partner and therefore the signature of the second partner would be necessary. The second condition was that the Applicant to obtain no objection of the Sales Tax Department in respect of the arrears of the Sales Tax and the third condition was that the no objection from the concerned Labour Union was required to be produced. The Petitioner thereafter by letter dated 6-12-2005 informed the Respondent No.5 that it had not complied with the conditions mentioned in the letter dated 5-3-2005 and therefore the application for transfer of the plot could not be processed. The Respondent No.5 was put to notice that if it proceeds with transfer of plot to the Respondent No.4 without the no objection

of the Petitioner, then the Petitioner would be constrained to take steps to cancel the allotment of the Respondent No.4. The matter rested there for sometime. Thereafter the Respondent No.4 vide its application dated 22-12-2007 once again applied for membership and in the said application the compliance of the three conditions mentioned in the letter dated 5-3-2005 were mentioned. The fact that the Deed of Assignment dated 24-8-2006 entered into between the Respondent No.5 and the Respondent No.4 was also mentioned. The fact that the Respondent No.4 is registered as a Small Scale Industrial Unit was also mentioned and the SSI certificate, was enclosed. The said application dated 22-12-2007 did not elicit any response from the Petitioner, this resulted in the Respondent No.4 approaching the authorities under the Maharashtra Co-operative Societies Act (for short the MCS Act) for grant of deemed membership in view of the fact that no reply was given by the Petitioner though a period of more than 90 days had elapsed. Since the plot in question is situated in a Co-operative Industrial Estate and the Petitioner is a Co-operative Industrial Society, the jurisdiction to hear the applications for membership is vested with the Joint Registrar, Co-operative Society, (CIE) (Directorate of Industries). The Joint Registrar Co-operative Societies has by his order dated 19-6-2009 allowed the application filed by the Respondent No.4 on the ground that inspite of the application being received by the Petitioner, no reply was sent to the Respondent No.4 within the stipulated period prescribed in Section 22 of the said Act and the Respondent No.4

consequently has become entitled to the grant of deemed membership. The contentions raised on behalf of the Petitioner in the said application that the transfer could not be permitted in view of the Government Resolution dated 30-10-2007 coming into force was rejected on the ground that the Deed of Assignment was executed on 24-8-2006 i.e. prior to the issuance of the said resolution and therefore the said resolution would have no application. The Joint Registrar accordingly issued a declaration that the Respondent No.4 is a deemed member of the Petitioner society in respect of plot No.67 and issued a further direction as contained in the operative part of his order to collect unearned income on account of transfer and issued a share certificate to the Respondent No.4.

4 The Petitioner aggrieved by the said letter dated 19-6-2009 filed a Revision by invoking Section 154 of the MCS Act before the State Government. The said Revision was heard by the Revisionary Authority i.e. the Hon'ble Minister for Co-operation who by the impugned order dated 23-9-2014 has dismissed the Revision Application and thereby confirmed the order dated 19-6-2009. The Revisionary Authority adverted to the fact that the sale of the plot has taken place on account of the settlement which took place in the proceedings before the DRT and since the said transfer has not been challenged by the Petitioner, the Petitioner now cannot deny the membership to the Respondent No.4. As indicated above, it is the said order dated 23-9-

2014 which has been impugned in the above Petition.

5 On behalf of the Respondent No.4 an affidavit in reply has been filed in which affidavit in reply the notice dated 29-7-2004 issued by the office of the DRT, Mumbai is annexed as also the letter dated 26-3-2004 of the Bank of Maharashtra accepting the one time settlement proposal on the terms and conditions mentioned therein, as also the agreement arrived at between the Respondent Nos.5 and 4 dated 7-8-2012, no objection of the Sales Tax Department dated 5-1-2007 as also no objection of the Labour Union which is on a stamp paper of Rs.100/- dated 7-9-2012.

6 The Learned Counsel appearing for the Petitioner Mr. Godbole would seek to reiterate the case of the Petitioner as urged before the authorities below. The Learned Counsel would contend that in terms of the sub-lease which has been granted to the Respondent No.5, it could not have transferred the plot in favour of the Respondent No.4. It was the submission of the Learned Counsel that the settlement arrived at between the Respondent No.5 and the Respondent No.4 was not before the DRT but a private settlement which obviously cannot confer any right on the Respondent No.4 having regard to the condition No.(n) in the sub-lease. It was also the submission of the Learned Counsel that having rejected the application filed by the Respondent No.5 vide letter dated 5-3-2005, it was not necessary for the

Petitioner to reply to the application for membership made by the Respondent No.4 on 22-12-2007.

7 Per contra the Learned Counsel appearing for the Respondent No.4 Mr. Phal would support the impugned order. The Learned Counsel would draw this courts attention to the affidavit in reply filed on behalf of the Respondent No.4 and the documents annexed thereto which have been adverted to hereinabove. It was therefore the submission of the Learned Counsel that the transfer in the instant case has taken place in the peculiar facts and circumstances wherein a settlement was arrived at between the Respondent No.5 and the Respondent No.4 in respect of the outstanding amount which was to be paid by the Respondent No.5 to the Bank of Maharashtra. The Learned Counsel would contend that by the application dated 22-12-2007, the Respondent No.4 had once again applied for membership after complying with the requisitions made in the letter dated 5-3-2005 of the Petitioner society and therefore membership could not be denied to the Respondent No.4 .

8 Having heard the Learned Counsel for the parties I have considered the rival contentions. The question is whether the Respondent No.4 was entitled to apply under Section 22(2) of the MCS Act. The said provision can be invoked if the application for membership is not replied

within the time frame mentioned in the said provision. In the instant case, though the application was made on 22-12-2007, the same was not replied to on behalf of the Petitioner society though the period mentioned in Section 22 had elapsed. It is in the said circumstance that the Respondent No.4 was entitled to approach the authorities under the said Act for grant of deemed membership. In so far as the transfer of plot and grant of deemed membership is concerned, it is required to be noted that the Respondent No.5 who is the sub-lessee of the said plot No.67 was being proceeded with before the DRT by the Bank of Maharashtra in respect of the amount due from it. The Bank of Maharashtra infact had fixed the date of settling the sale proclamation by issuing notice dated 29-7-2004. It is thereafter that the agreement between the Respondent Nos.4 and 5 had been arrived at as a consequence of which the Respondent No.5 made a one time settlement proposal to the Bank of Maharashtra. The said one time settlement proposal was accepted by the Bank of Maharashtra vide its letter dated 26-3-2004 and one of the conditions of the settlement was that the amount of Rs.16.69 lacs was to be paid directly by the Respondent No.4 to the Bank of Maharashtra and the balance amount was to be paid by the Respondent No.5 so as to make up for the outstanding loan amount of Rs.20.50 lacs which the Respondent No.5 owed to the Bank of Maharashtra at the relevant time. The Bank of Maharashtra had also in the said letter dated 26-3-2004 had given its no objection to the sale of the said plot, factory and the building to the Respondent No.4. Hence the aforesaid

aspects assume importance in the context of the transfer and the claim for membership made by the Respondent No.4. The Respondent No.5 also obtained the no objection of the Sales Tax Department as also the no objection of the Labour Union for transfer of the plot to the Respondent No.4 which was a condition mentioned in the letter dated 5-3-2005 of the Petitioner society. Hence in so far as the conditions mentioned in the said letter dated 5-3-2005 are concerned, they have been complied with, the transfer of the plot has also taken place in view of the settlement arrived at between the Respondent No.4 and the Respondent No.5 as a consequence of which the loan amount for which steps were taken by the Bank of Maharashtra before the DRT, was cleared. Hence this is not a case where the Respondent No.4 and the Respondent No.5 have entered into a transaction and thereafter have approached the Petitioner society. The transaction was an outcome of the steps taken by the Bank of Maharashtra against the Respondent No.5 for recovery of the loan amount. Since the Petitioner society has not replied to the said application dated 22-12-2007 made by the Respondent No.4, the Respondent No.4 was entitled to approach the authorities by invoking Section 22(2) of the MCS Act which application has been allowed by the Joint Registrar which order has been confirmed by the Revisionary Authority i.e. the State Government by the impugned order.

9 In my view, having regard to the aforesaid conspectus of facts, the

orders passed by the authorities below conferring membership on the Respondent No.4 cannot be found fault with. No case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]