

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11116 OF 2015**

Zanobia Mirza & Ors.

..Petitioners

Vs.

Nand Deep Udyog CHS Ltd & Ors.

..Respondents

Mr. V. Y. Sanglikar for the Petitioners

Mr. Dinesh Rane for the Respondent No.1

Mr. S. D. Rayrikar AGP for the Respondent No.7

CORAM : R. M. SAVANT, J.

DATE : 3rd MAY, 2016

P.C.

1 Though the above Petition is shown for orders, as the service on the Respondent Nos.2 to 6 is not complete, the Learned Counsel for the parties are agreeable to the above Petition being heard for admission as the Respondent No.1 society is the proponent of the application under Section 11 of the Maharashtra Ownership of Flats Act and is therefore the main contesting party. The Learned Counsel for the Petitioner seeks deletion of the Respondent Nos.2 to 6 as in the context of the challenge raised in the above Petition they are only formal parties. Leave granted. Amendment to be carried out during the course of the week.

2 The above Petition takes exception to the order dated 23-4-2015 passed by the Competent Authority and Deputy Registrar Co-operative

Societies (3), Mumbai, as also the correction order dated 8-6-2015 passed by the same authority as also the certificate dated 23-4-2015 issued by the same authority. The principal ground on which the said order dated 23-4-2015 is challenged is that the said application under Section 11 of the said Act was filed against dead persons i.e. the original owners who at the time of the filing of the application were all dead. The Petitioners herein are the heirs of the said original owners. The Learned Counsel Mr. Rane appearing on behalf of the Respondent No.1 does not dispute the said position. However, the Learned Counsel Mr. Rane contends that though the order is vitiated on the said ground the Respondent No.1 may be granted liberty to file a fresh application against the heirs of the original owners. Since there is no dispute about the fact that the original owners who were arrayed as the Respondents to the application filed before the Competent Authority and Deputy Registrar Co-operative Societies, are all dead, the impugned order dated 23-4-2015 as corrected by order dated 8-6-2015 would have to be quashed and set aside and is accordingly quashed and set aside. The certificate would also stand quashed and set aside. The Petition is allowed to the aforesaid extent and disposed of.

3 However, it is clarified that the Respondent No.1 would be at liberty to file a fresh application for deemed conveyance invoking Section 11 of the said Act, if so advised.

4 Needless to state that the contentions of the parties on merits have not been gone into and it is at the appropriate stage that the same can be urged by the parties before the appropriate authorities.

[R.M.SAVANT, J]