

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

WRIT PETITION NO. 11547 OF 2014

Dhanlaxmi Co. op. Housing Society Ltd.	... Petitioner
V/s.	
Dhruv Medical Foundation & Research Center Pvt. Ltd. & Ors.	... Respondents

Mr. S.K. Shinde with Ajinkya Jaibhave i/b Sudam Kale for the
Petitioner.
Mr. Vijay D. Patil for the Respondent No.1.
Ms. Aparna Vatkar, AGP for Respondent Nos. 2 to 4.

**CORAM : K. K. TATED, J.
DATED : 23/08/2016**

P.C.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of Constitution of India, the
Petitioner society is challenging the order passed by Respondent No.3
Authority dated 24.12.2012 under Section 22(2) of the Maharashtra
Co-operative Societies Act, 1960 and the order dated 17.12.2013
passed by learned Additional Joint Registrar of the Societies, Mumbai
Division, Mumbai in Revision Application No. 48 of 2013 directing the
Petitioner to admit the respondent as a member of the society.

3 In the present proceeding, the Respondent No.1 purchased the
subject premises Nos. C-101 to 104 with ground floor premises from
M/s. Sugam Estate & Trading Pvt. Ltd. (hereinafter will be referred as
'said seller') vide Agreement for sale/Transfer dated 23.08.2011. The

said agreement was duly stamped and registered. Thereafter, the Respondent No.1 and said seller executed Deed of Rectification dated 28.02.2012. For this transaction, the Petitioner society was also issued NOC on 23.06.2011 for sale of the subject premises. Thereafter, the Respondent No.1 made application to the Society for transferring the share certificate in his name. As the society failed to take immediate steps according to law, the Respondent No.1 filed Appeal before Sub-Registrar Co. Op. Societies as per Section 22 of the Maharashtra Co-operative Societies Act, 1960 (for short 'the said Act'). After considering the objections raised by the Society, the learned Sub-Registrar, Co-operative Society by its impugned order dated 24.12.2012 allowed the Respondent No.1's application, directing petitioner to enroll the Respondent No.1 as their member.

4 Being aggrieved by the said order dated 24.12.2012 passed by the Dy. Registrar, Co. Op. Societies, 'L' Ward, under Section 22(2) of the said Act, the Society preferred Revision Application No. 43 of 2013 before Divisional Joint Registrar, Co. Op. Societies, Mumbai Division, Mumbai. The Divisional Joint Registrar after considering the evidence on record, rejected petitioner's society's Revision Application No. 43 of 2013. Hence, the present petition.

5 The learned Counsel for the petitioner submits that both the authorities below failed to consider that by Sale Deed dated 23.08.2011 by which the Respondent No.1 purchased four flats in their building. He submits that Respondent No.1 ought to have filed four separate applications for joining him as member. He further submits that by this

Sale Deed dated 21.08.2011, the Respondent No.1 also purchased garage. He further submits that when the Respondent No.1 encroached society's common space below staircase, the Authority below ought to have dismissed Respondent No.1 Application for membership. He submits that on the basis of sale deed, the Respondent No.1 wants to encroach the open space/common space of the society. Hence, the impugned order passed by both the Authorities below is required to be set aside.

6 On the other hand, the learned Counsel for the Respondent No.1 purchaser vehemently opposed the present Writ Petition. He submits that concurrent findings of facts recorded by both the Authorities below. Hence, there is no question of entertaining the present Writ Petition under Article 227 of the Constitution of India to interfere with the well reasoned order passed by the Authorities. He submits that Respondent No.1 filed application before the Dy. Registrar under Section 22 of the said Act for directing petitioner society to allow his membership only. By that application, Respondent No.1 has not claimed any right, title and interest in common space of the petitioner society. He submits that if there is any dispute about the common space of the society, the alternate remedy is available to the Petitioner. That issue cannot be agitated in the present Writ Petition. In support of this contention, he relies on judgment of this Court in the matter of ***Videocon Appliances Ltd. V/s. Maker Chambers V Premises co. Op. Society Ltd. & Ors., reported in 2006 (1) Bom.C.R. 6.*** He relies on paragraph 12 which reads thus:

“12. Now turning to the merits of the case, I find that the order passed by the Deputy Registrar was legal and valid

and justified. It is not open for any society to refuse membership on the ground that the construction which has been carried out by the builder is unauthorised and in contravention of the provisions of Section 7 of the Maharashtra Ownership Flats Act, 1963. Whether the construction is authorised or unauthorised is a matter which is a matter of civil dispute and has to be determined by the Civil Court and neither the co-operative society nor the Deputy Registrar nor Divisional Joint Registrar is empowered to go into the aforesaid issue at all for determining whether a person is entitled to be a member or not. In my opinion, a membership of the society has to be considered only on the rules, regulations and bye-laws and not on the basis of external factors such as whether the construction of the premises which is sought to be purchased by him is legal, illegal or authorised or unauthorised. In my opinion, the issue as to the validity of the construction is expressly required to be determined by the civil court and till such determination is made, the society as well as the authorities are not entitled and/or justified in refusing to grant membership to a person. In the present case even the construction is according to the sanctioned plans and the plans are sanctioned by the B.M.C. in respect of the premises namely office no. 1601 which the petitioner has sought to purchase from the Income-tax Authorities in auction sale. However, the contention is that the sanction by the Corporation is illegal because it is being done without the consent of the premises purchasers under section 7 of the Maharashtra Ownership of Flats Act, 1963. In my opinion, such a dispute is not within the jurisdiction of the Deputy Registrar and Divisional Joint Registrar to determine and the society is also not empowered to refuse the membership on such a contention. If the office is constructed by breach of any provisions of law by the builder then the remedy is by way of a suit which in the present case is already preferred and pending in this Court. It is not open for the society to reject the membership on the aforesaid ground. In the present case the Divisional Joint Registrar while exercising the power of revision under section 154 of the Maharashtra Co-operative Societies Act has in fact upheld the refusal of the membership on such a ground which in my opinion is totally

illegal and without authority of law. That decision is outside the purview of the Divisional Joint Registrar while determining under the provisions of Section 22 (2) and 23 of the Act that whether a person is entitled to be a member or not of any society. In my opinion, therefore, the present petition must succeed. The petition is, therefore, allowed. The order passed by the Divisional Joint Registrar dated 6.9.2001 is set aside and the order passed by the Deputy Registrar dated 18/5/1998 is confirmed. Petition is made absolute accordingly. However, there shall be no order as to costs.”

7 On the basis of this submissions the learned Counsel for the Respondent No.1 submits that there is no substance in the present Writ Petition and same to be dismissed with costs.

8 I heard both the sides at length. It is to be noted that in the present proceeding, the Respondent No.1 filed Application under Section 22 of the said Act for direction to the petitioner society to allow him their membership only. There is no dispute that Respondent No.1 purchased the suit premises by Sale Deed dated 23.08.2011 subsequently they executed Deed of Rectification dated 28.02.2012. For this transaction, petitioner society issued NOC on 23.06.2011. Under Section 22 of the said Act, there is no question of entertaining any issue raised by the petitioner society about encroachment of the Respondent No.1 of common space of the society. For that purpose, independent remedy available to the petitioner. Same can be supported by judgment of this Court of Videocon Appliances Ltd.(supra).

9 Considering this fact and law declared by this Court in the matter of Videocon Appliances Ltd.(supra) I do not find any reason to interfere with the concurrent findings of facts recorded by both the Authorities

below. Needless to observe that petitioner society have any dispute about the common area of their society, they are free to take appropriate steps according to law.

10 Hence, following order is passed:

- a) Writ Petition stands dismissed.
- b) Liberty granted to the petitioner to file, if they so desire, appropriate proceeding for other issue and that should be decided by the Authority according to law without influencing the order passed by this Court.
- c) No order as to costs.

(K.K.TATED, J.)