

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.153 OF 2007

Mitra Parivar Co-op. Housing Society Ltd.
Kherwadi, Bandra (East),
Mumbai-400 051.

.. Petitioner

V e r s u s

1. The Divisional Joint Registrar Co-op
Societies having his office at 6th Floor,
Malhotra House, Fort, Bombay-400 001

2. The Assistant Registrar Co-op
Societies 'H-East' Ward, Sahakar
Bazar, 4th Floor, Opp. Bandra Station,
Bandra (West), Mumbai-400 050

3. Fem Care Farma Limited
A/63/65, Mittal Tower, 210,
Nariman Point, Mumbai-400 021

.. Respondents

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Mr. Mayur Khandeparkar a/w Mr. L.R. Shukla, Mr. Manoj S. Singh i/b Legal
Vision for the Petitioner.

Mr. Milind More, Addl. G.P. for Respondent Nos. 1 and 2.

Mr. V.A. Thorat a/w Mr. Roshan Tanna i/b K.S. Dewal for Respondent No.3.

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CORAM : S.C.GUPTE, J.

DATE : 17 JUNE 2016.

P.C. :

. The Petition challenges an order passed by the Assistant Registrar,
Co-operative Societies, under Section 22 of the Maharashtra Co-operative
Societies Act, 1960, and confirmed in revision by the Additional Joint

Registrar of the Co-operative Societies.

2 The Petitioner is a co-operative housing society registered under the provisions of the Maharashtra Co-op. Societies Act, 1960 ("the Act"). The Petitioner is a tenant co-partnership housing society. Originally, one State Industrial Co-op. Association Ltd. (since in liquidation), was the owner of a plot of land admeasuring 24560 sq.mt. or thereabouts alongwith a structure standing thereon, which is described as "godown", and other structures. The said State Industrial Co-operative Association Ltd went into liquidation and its liquidator took charge of the assets and affairs. Under a leave and licence agreement dated 9 October 1967, the liquidator granted licence in favour of one M/s Elite Enterprises, a partnership firm, for use and occupation of the said godown as a licensee of the liquidator for a period of 11 months. M/s Elite Enterprises appears to have been in continuous use and occupation of the premises even after the expiry of the licence period, and started claiming protection as a protected licensee under the Rent Act. In the meantime, the Petitioner-society purchased the land alongwith the structures standing thereon under a conveyance deed dated 4 April 1979 executed by the liquidator in its favour. After such conveyance, the Petitioner constructed a building comprising 26 flats and allotted the same to its members. Sometime in the year 1987, the Petitioner-society filed an eviction suit, being R.A.E. Suit No.682/2216 of 1987, against M/s Elite Enterprises. During the pendency of the suit, M/s Elite Enterprises claims to have assigned its business along with the goodwill and tenancy rights in favour of one Acetop, a proprietary concern. This proprietorship concern was later converted into a private limited company, M/s Acetop Distributors Pvt. Ltd. This latter company is the

transferor of the business along with the goodwill and tenancy rights of Respondent No.3. Between 19 March 2004 and 31 March 2005, there was a Board of Administrators appointed in respect of the Petitioner-society under Section 78 of the Act after removal of its elected Managing Committee. After new elections were held for the office of the Managing Committee, under the Board of Administrators, the charge of the Petitioner-society was handed over to the newly elected Managing Committee on 31 March 2005. The newly elected Managing Committee of the Petitioner-society, after going through the record, came across a letter dated 25 January 2005 addressed by Respondent No. 3 to the Board of Administrators of the Petitioner-society alongwith various documents. The letter appears to have been received by the Board of Administrators on 1 February 2005. The Board of Administrators did not bring the letter to the notice of the members of the Petitioner-society or take any action on the same. The letter of 25 January 2005 was an application for membership of the Petitioner-society. Respondent No.3 claimed to be a transferee in respect of the godown and claimed membership of the society as such transferee. The application was considered by the Managing Committee of the Petitioner-society in its meeting held on 17 June 2005 and subsequently, in the General Body Meeting held on 19 June 2006. The Petitioner-society resolved to reject the application on the ground that transferor himself being not a member of the Petitioner-society or holding shares or any other premises therein, there is no question of any such transfer taking effect or such transferee claiming any membership. The Petitioner-society accordingly by its letter dated 28 June 2005 informed Respondent No.3 about the rejection of its application for membership and returned the cheques offered by Respondent No.3. It appears that

Respondent No.3 proceeded to file an appeal under Section 22(2) of the Act before the Assistant Registrar of Co-operative Societies, seeking an order of admission as a member in the Petitioner-society. After hearing the parties on the appeal, the Assistant Registrar by his order dated 18 August 2005, admitted Respondent No.3 to the membership of the Petitioner-society. This order was challenged in a revision application by the Petitioner-society before the Divisional Joint Registrar of Co-operative Societies. Later, by the impugned order dated 20 April 2006, the Divisional Joint Registrar rejected the revision application. Being aggrieved, the Petitioner-society has approached this Court in the present Petition under Article 226 of the Constitution of India.

3 The controversy in this Petition involves three aspects. Firstly, it is the case of the Petitioner-society that Respondent No.3 is not an owner of premises forming part of the property of the Petitioner-society, but a trespasser, who claims through a licensee whose license has come to an end and against whose predecessor-in-interest, there is a decree of eviction passed by the Court of Small Causes. Secondly, it is submitted that even assuming that Respondent No.3 can claim through the licensee, since the claim of membership is not through a member, there is no case for granting of membership under Section 22 of the Act. Thirdly, it is claimed that the statutory period of three months has not elapsed from the date of making of the application for membership to the Petitioner-society as of the date of the appeal under Section 22(2) of the Act. It is submitted that during the period from 19 March 2004 to 31 March 2005, the management of the Petitioner-society was with the Board of Administrators appointed under Section 78 of the Act. It is submitted that the letter of 25 January 2005

was received by the Board of Administrators, who had no authority to grant any membership of the Petitioner-society. It is submitted that the period between that date, i.e. 25 January 2005, and 31 March 2005, when the affairs of the society were handed over to the newly elected Managing Committee, ought to be excluded from the computation of the period of three months. It is submitted that the Petitioner-society had submitted its reply rejecting the application of membership of Respondent No.3 within the statutory period of three months so reckoned.

4 It is an admitted position that the leave and licence agreement dated 9 October 1967 with M/s Elite Enterprises, who were the predecessor in interest of Respondent No.3, claiming through the Liquidator of the original owners, was for a period of 11 months. The licence also contained an express stipulation that the licensee cannot allow or permit any third party to use and occupy the premises or a portion thereof or create any transfer of, or assign, the premises or any portion thereof in favour of any third party. The case of Respondent No.3 is that on 16 December 1991, M/s Elite Enterprises assigned their rights, interests including goodwill of the business and tenancy rights to a proprietress of a firm called M/s Acetop, which was later converted into a private limited company called M/s Acetop Distributors (P) Ltd. M/s Acetop Distributors (P) Ltd assigned its business as a going concern with rights of tenancy of the premises together with goodwill etc. to Respondent No.3 for consideration of Rs.80 lacs. Respondent No.3 claims to have paid the arrears of rent of the original tenant, M/s Elite Enterprises, in the sum of Rs. 21,700/- by a cheque drawn in favour of the Petitioner-society. This cheque was accepted by the Petitioner-society as a compensation towards the dues in respect of

the premises and without prejudice to its rights and contentions in the eviction suit filed by it against M/s Elite Enterprises. The eviction suit was eventually decreed by the Court of Small Causes at Mumbai, by its judgment and decree dated 5 May 2011. Respondent No.3 raised an obstruction to the decree of eviction and accordingly, the Petitioner-society has taken out obstructionist proceedings against Respondent No.3 before the Court of Small Causes at Mumbai. These proceedings are pending before that Court. On these facts, the Co-operative Authorities were expected to decide the application for membership of the Petitioner-society by Respondent No.3.

5 Section 22 of the Act provides for an application for membership of a co-operative society. The Section provides for qualifications of such membership. Sub-section (2) provides that where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of receipt of the application for admission, whichever is earlier. It further provides that if the society does not communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been admitted as a member of the society. Sub-section (2) further provides that if any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties. On the other hand, if the application for membership of an eligible person is refused by the society, the aggrieved person is entitled to file an appeal to the Registrar within a period of sixty days from the date

of such decision, under sub-section (2) of Section 23 of the Act. The decision of the Registrar on this appeal is final under sub-section (3) of Section 23 of the Act. Rules 19 and 24 of the Maharashtra Co-operative Societies Rules, 1961 inter alia provide for (i) conditions to be complied with by the applicant for membership, (ii) procedure for tendering the application to the Registrar for membership and (iii) procedure for transfer of shares. Rule 19 provides for the form in which the application for membership must be made. Rule 24 of the Act provides for conditions laid down for transfer of shares in accordance with the provisions of the by-laws of the society for such membership.

6 The cumulative reading of the various provisions of law referred above would indicate that in the first place, the applicant for membership must be by an eligible person. If the application is made by a transferee on the basis of transfer of shares, such transferee must be an eligible transferee. In the case of an appeal under Section 23 of the Act, the Registrar is required to consider the merits of the application for membership and eligibility of the applicant. Even in the case of an application for deemed membership under Sub-section (2) of Section 22 of the Act, the Registrar is expected to decide whether or not the applicant claiming deemed membership of the society is an eligible applicant or eligible transferee, as the case may be. The provisions of deemed membership do not apply ipso facto on the applicant's application for membership not being decided by the society or the decision not being communicated to the applicant within the statutory period of three months from the date of receipt of the application. Not only should the statutory period of three months have expired from the date of receipt of the

application, but the applicant must be shown to be an eligible applicant or an eligible transferee, as the case may be, for the Registrar to accept a case of deemed membership. In the case of **Videocon Appliances Ltd. Vs. Maker chambers V Premises Co-op. Socy. Ltd**¹, our Court has analyzed the provisions of Section 22(2) and 23(2) of the Act. The Court held that the power conferred on the Registrar for determination of the question as to whether there was a deemed membership was comparable with the power conferred on the Registrar under Section 23(2) of the Act to determine, whether refusal of the membership was valid or not. In both cases, the Registrar decides whether a person is entitled to be a member of the society or not. The provisions of Sections 22(2) and 23(2) of the Act only provide for two different modes for agitating the same cause of action, namely, denial of membership of the society to an applicant. The relevant observations of the Court in that case are quoted below :

“10. In so far as the aforesaid contentions are concerned, in my opinion the same lacks total merit. Firstly, power under section 22(2) and 23(2) is the power conferred on the Registrar Co-operative Societies which is the same authority namely, Deputy Registrar of Cooperative Societies. The power conferred of determination whether there is a deemed membership or not and the power conferred under section 23(2) that whether the refusal of the membership is valid or not, in my opinion, is nothing but identical power to determine whether a person is entitled to be a member of the society or not. The provisions of section 22(2) and 23(2) only provide for only two different modes for the same cause of action as to become a member of a particular society. The authority prescribed under section 22(2) and under section 23(2) being both identical, in my opinion, the Registrar while exercising the power under section 22(2) is also equally empowered to consider, if there is a refusal, whether the refusal of the membership is legal and valid. I am also of the further opinion that Section 22(2) and 23(2) of the Maharashtra Cooperative Societies Act is a complete scheme for becoming a member of the society. It provides that society's membership is an open membership

1 2006(2) Mh.LJ 388

and every person is entitled to become a member of the society. It also provides two modes to become member of the society (i) where there is an inaction on the part of the society to take decision on an application for membership and (ii) where an action is initiated and a decision is taken and the validity of the decision is under scrutiny. This, in my opinion is a complete scheme alternatively providing that by virtue of inaction or by virtue of an illegal action if the membership is refused by the society then Registrar is empowered to take action in the matter. The contention of the learned counsel for the petitioner that it is a separate scheme by itself and, therefore, the Registrar exercising power under section 22(2) and under section 23(2) exercises a totally different power one in case of original power and another in case of appellate power and, therefore, both the proceedings must be treated as separate, independent and distinct. In my opinion, the contention is devoid of any merit. It is because under section 23(1A)(2) the power is conferred on the Registrar to determine whether there is a deemed membership or not. If this power under section 23(1A) in contrast to the power under section 22(2) of the Maharashtra Co-operative Societies Act is conferred on the basis that where the society has accepted the application but did not take decision then the power under section 22(2) Page 1410 can be exercised. But where the society refuses to accept the application itself for membership, then the application can be filed with the Registrar who will forward the same to the society for taking action and if action is not taken, a person becomes a deemed member and if any dispute arises about the deemed membership in such a case, then under section 23(1A) the Registrar is empowered to determine the said dispute. In my opinion, section 22(2) and 23(2) is required to be harmoniously interpreted. I am of the opinion that the power of the Registrar under section 22(2) and 23(2) is identical and he is exercising the very same jurisdiction thus in my opinion he is entitled to determine whether a person is entitled to become a member of any co-operative society or not. The contention of the learned counsel that the application of the petitioner has been rightly rejected because he was not entitled to be a deemed member and the Deputy Registrar wrongly entered into the arena of the fact of refusal is valid or not therefore, cannot be accepted.”

7 In the premises, when the application for deemed membership is made to the Registrar, the Registrar is not simply required to consider whether the statutory period of ninety days has expired from the date of receipt of the application for membership by the society, but whether the applicant is eligible for admission to the membership of the society. The

Authorities under the Act, in the present case, appear to have proceeded simply on the bare footing that the statutory period of three months has elapsed from the date of receipt of the application without any decision being communicated to the applicant. There is no consideration of the question of eligibility of the applicant. In its revision order, the Additional Joint Registrar, Co-operative Societies, appears to have considered, in addition to the expiry of the statutory period, the fact that Respondent No. 3 was in physical possession, occupation and enjoyment of the subject godown. Physical possession of Respondent No.3 is not in any way relevant from the point of view of deciding eligibility for membership either under Section 22(2) or Section 23(2) of the Act.

8 If one has regard to the documents submitted by Respondent No.3 in support of its application for membership, it is apparent that the application itself is in Forms Appendix-21 and 22, and Appendix-24. These forms are to be filed in respect of transfer shares and interest in the capital/property of the society by an existing member to a particular transferee. Appendix-21 is a form of notice of intention to transfer such shares and interest, whilst Appendix-22 is a form of application for transfer of shares and interest in the capital/property of the society to be made by the transferor. Appendix-24 under Bye-law No.37(e)(ii) is a form to be submitted for transfer of shares and interest in share capital/property of the society by the transferee. It is not disputed by Respondent No.3 that its transferor, namely, M/s Acetop Distributors (P) Ltd., was not a member of the Petitioner-society and had no interest in the capital/property of the society. M/s Acetop Distributors (P) Ltd. was merely claiming through a licensee whose licence is claimed to have been determined and against

whom a decree of eviction was already obtained by the Petitioner-society. Respondent No.3 was, thus, not eligible to apply for the membership of the Petitioner-society as a transferee of M/s Acetop Distributors (P) Ltd. M/s Acetop itself had no right to the society's membership. This aspect of the matter, which the authorities below were expected to determine for deciding about the eligibility of Respondent No.3, appears to have been completely overlooked. If this aspect is duly considered, there is no case at all for Respondent No.3 to claim membership of the Petitioner-society.

9 There is more one more reason why the application for deemed membership ought to have been rejected by the authorities below. On the date of the application for membership by Respondent No.3 to the Petitioner-society, i.e. on 25 January 2005, the administration of the Petitioner-society was with a Board of Administrators appointed under Section 78 of the Act. That situation continued till 31 March 2005. The Board of Administrators appointed under Section 78 of the Act is merely empowered to exercise all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the society. The role of an administrator or a committee appointed by the Registrar under Section 78 of the Act, while the elected committee of management is under supersession, is only to bring on an even keel a ship which is in doldrums. The Supreme Court in the case of **Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan**,² whilst interpreting the provisions of Section 30A of the Karnataka Co-operative Societies Act, 1959, which can be said to be *pari materia* for our purpose, has held that the provisions of Section 30A of the Karnataka Act, which enable the

2 AIR 2000 SC 2378

Administrator or Special Officer appointed thereunder to exercise all the powers and functions of the Committee of Management, empower the Administrator or Special Officer to exercise powers and functions only as may be required in the interests of the co-operative society. The Court held that a co-operative society is expected to function in a democratic manner through an elected committee of management and that committee of management is alone empowered to enroll new members. Enrolment of new members involves an alteration of the composition of the society itself and such a power should be exercised by an elected committee rather than by an administrator or a committee appointed by the Registrar while the elected committee of management is under supersession.

10 Mr. Thorat, learned Senior Counsel for Respondent No.3, drew my attention to the powers of Board of Administrators to call, notwithstanding whatever is contained in the by-laws, a special general body meeting of the society to review or reconsider a decision or action taken or resolution passed by the previous committee or to endorse a decision taken by him, which appear in Section 78 of an Act and which are not provided in Section 30A of the Karnataka Act. Learned Counsel, relying upon this distinction, submitted that the position would be different under Section 78 of the Act and the ratio of the Supreme Court in **Kuttappan's** case would not apply. The power to call a special general body meeting in respect of an earlier decision or resolution of the superseded Managing Committee, is in the face of the illegalities or misconducts committed by the earlier Managing Committee, which were, in the first place, reasons for its supersession and appointment of the Board of Administrators in its place. If any decision taken or resolution passed by the previous committee or

any action taken by it, was either illegal or against the interests of the society, this power enables the Board of Administrators of the society to call a special general body meeting for review or reconsider the same. This does not, firstly, mean that the Board of Administrators itself has the power to undo any decision or revoke any action of the superseded committee. The general body of the members alone can do away with or endorse an earlier action or decision of the managing committee. Secondly, that still does not mean that the Board of Administrators itself has the power to change the composition of the society by admitting any members. The decision of the Supreme Court in the case of **Kuttappan** (supra) would, accordingly, squarely apply to the facts of the present case. The Board of Administrators did not have the power to consider and grant the application for membership of Respondent No.3. In the premises, the period during which the Board of Administrators was in charge of the affairs of the Petitioner-society after the date of receipt of the application and till it was divested of that charge in favour of the newly elected managing committee, ought to be disregarded for computation of the statutory period provided in Section 22(2). If this period is disregarded, the Petitioner-society's rejection of the application of membership is very much within the statutory period of three months. In the face of such rejection, it was incumbent on Respondent No.3 to file an appeal under Section 23(2) of the Act to the Registrar. The Registrar could not have, in the premises, entertained the application for deemed membership under Section 22(2) of the Act. In any event, as I have noted above, even under Section 22(2), the Registrar was bound to consider the aspect of eligibility of the applicant to the membership of the Petitioner-society and this was obviously not done in the present case, as I have discussed above.

11 In the premises, the Petition deserves to be allowed. **Rule** is accordingly made absolute and the impugned orders of the Assistant Registrar, and the Divisional Joint Registrar, Co-operative Societies, are quashed and set aside and the application for membership of Respondent No.3 is rejected. There shall be no order as to costs.

(S.C.GUPTE, J.)