

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.879 OF 2015

WITH

WRIT PETITION NO.889 OF 2015

Ashoka Hind Co-operative Housing Society Limited ... Petitioner

Vs.

The Divisional Joint Registrar, Co-op. Societies,

Mumbai Division and others ... Respondents

Ms Manjiri S. Parasnis for Petitioner in all the Petitions.

Ms M. S. Bane, 'B' Panel AGP for Respondents No.1 and 2-State.

Mr. Surel Shah a/w. Ms Geeta Rijhwani i/b. S. J. Khera for Respondent No.3.

**CORAM : R. G. KETKAR, J.**

**DATE : APRIL 05, 2017**

**P.C. :**

Heard Ms Parasnis, learned Counsel for petitioner in all the Petitions, Ms Bane, learned AGP for respondents No.1 and 2-State and Mr. Shah, learned Counsel for respondent No.3 in Writ Petitions No.879 of 2015, 881 of 2015, 882 of 2015, 885 of 2015, 886 of 2015, 888 of 2015 and 889 of 2015 at length. In order to decide the controversy raised in these Petitions, the facts from Writ Petition No.879 of 2015 are taken into consideration.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 28.03.2012 passed by the respondent No.2, Deputy Registrar, Co-operative Societies, H-West Ward, Mumbai in Appeal No.19 of 2011 as also the judgment and order dated 28.10.2013 passed by the respondent No.1, Divisional Joint Registrar, Co-operative Societies, Mumbai Division in Revision Application No.318 of 2012. By order dated 28.03.2012, respondent No.2 allowed the appeal preferred by respondents No.3 and 4 and directed the petitioner society to enroll respondents No.3 and 4 as

members of the society by issuing the share certificate. By order dated 28.10.2013, respondent No.1, Divisional Joint Registrar dismissed the Revision Application preferred by the petitioner society.

3. In support of this Petition, Ms Parasnis submitted that on 29.08.2001, petitioner entered into agreement with M/s. Madhu Builders and Developers for carrying out improvement works. She has taken me through clauses 3, 6, 8, 15 and 16 of the said agreement. She submitted that in terms of clause 16, developer was to obtain occupation certificate. She submitted that respondents No.3 and 4 occupied flat No.601 situate on the 6<sup>th</sup> floor in 'B' Wing since 2004. As against this, the occupancy certificate was received on 14.11.2006. In other words, even before obtaining occupation certificate, respondents No.3 and 4 were unauthorizedly occupying flat No.601.

4. Ms Parasnis further submitted that respondent No.3 was acting as agent of the said developer. She has taken me through the orders passed in Writ Petition No.6110 of 2008 as also the application made by the respondent No.3 in appeal before Divisional Joint Registrar of Co-operative Societies for impleadment. That appeal was preferred challenging the appointment of administrator of the society. She submitted that respondent No.3 was interfering with the administration of the society. In other words, the activities of the respondent No.3 were prejudicial to the interest of the society. She further submitted that respondents No.3 and 4 made application for enrolling them as members. The said application was considered in the meeting of the society convened on 27.07.2008. The application was rejected and thereafter respondents No.3 and 4 did not prefer appeal within 60 days as stipulated in Section 23 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'). Just to revive the cause of action, application was made by respondents No.3 and 4 on 15.04.2011, which was rejected

by the society on 15.07.2011. She submitted that along with the appeal, respondents No.3 and 4 did not file application for condonation of delay. The authorities below have not considered this aspect. Ms Parasnis has taken me through the impugned orders to contend that the authorities below were not justified in allowing the appeal preferred by respondents No.3 and 4.

5. On the other hand, Mr. Shah supported the impugned orders. He submitted that reliance placed on the orders passed in Writ Petition No.6110 of 2008 is misconceived as the said Petition was ultimately disposed of in terms of the consent terms dated 25.02.2009. He submitted that respondents No.3 and 4 are paying the maintenance charges regularly and they are not in arrears. He submitted that in fact development agreement entered into between the society and the developer clearly provided that the developer shall be entitled to sell their stilt car-park spaces and further that developer will be entitled to carry out additional construction and sell the flats to the prospective purchasers. The society shall not raise any excuse or refuse to admit such purchasers / allottees as its members.

6. Mr. Shah submitted that one of the reasons given in the resolution dated 27.07.2008 was that that the applications submitted by respondents No.3 and 4 are not complete in all respects. He submitted that no opportunity was given to respondents No.3 and 4 to remove the deficiencies. Mr. Shah further submitted that petitioner has filed 12 Revision Applications before the Divisional Joint Registrar challenging the orders passed by the Deputy Registrar. In respect of Revision Applications No.315 of 2012, 316 of 2012 and 324 of 2012, though these persons are similarly situated, the society has enrolled them as members. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It appears that the petitioner entered into development agreement on 29.08.2001 with M/s. Madhu Developers and Builders. Clause 3 thereof provided that the developer will carry out construction work by raising additional floors on the existing buildings. Developer was to negotiate with each member directly and take development rights from each member. The work of improvements was enumerated in clause 6 of the agreement. By clause 8, developer was to ensure that the occupants of the ground floor are shifted on the higher floor and the ground floor is utilized as stilt car-park space and the said space will belong to the developer alone. Developer is entitled to sell the same and appropriate the sale proceeds to themselves. Clause 15.1 provided that developer will be entitled to sell the additional flats to prospective purchasers qualified to become members of the society. Clause 16 recited that the society shall not raise any excuse or refuse to admit such purchasers / allottees as its members.

8. Ms Parasnis submitted that respondents No.3 and 4 were occupying flat No.601 since 2004 and the occupation certificate was obtained on 14.11.2006. In other words, they were in unauthorized occupation of the said flat. On the other hand, Mr. Shah submitted that Writ Petition No.6110 of 2008 was disposed of on 25.02.2009 in terms of the consent terms. Ms Parasnis was not in a position to show that respondents No.3 and 4 are not qualified to be members. As noted earlier, in terms of clause 15.1 of the agreement dated 29.08.2001, the developer was entitled to sell the additional flats to prospective purchasers qualified to become members. Respondents No.3 and 4 are paying the maintenance charges and are not in arrears of the society charges. Ms Parasnis submitted that respondents No.3 and 4 were interfering with the affairs of the society. It is not possible to accept this

submission as respondents No.3 and 4 by filing application for impleadment in the appeal challenging the order of administrator were vindicating their rights. It, therefore, cannot be said that they were interfering with the administration of the affairs of the society.

9. Ms Parasnis submitted that the appeal preferred by respondents No.3 and 4 was clearly barred by limitation. They did not file application for condonation of delay. The authorities below were, therefore, not justified in allowing the appeal. On the other hand, Mr. Shah submitted that the appeal was preferred against the communication dated 15.07.2011 by which the society refused membership.

10. In my opinion, it cannot be said that the appeal preferred by the respondents No.3 and 4 was barred by limitation as the appeal was preferred against the communication dated 15.07.2011. That apart, all the other similarly situated members in Revision Applications No.315 of 2012, 316 of 2012 and 324 of 2012 were enrolled as members. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petitions fail and the same are dismissed.

11. At this stage, Ms Parasnis orally applies for stay of this order for a period of 4 weeks from today. Mr. Shah opposes this on the ground that since 2015, the impugned orders were not stayed. In view thereof as also having regard to the fact that the petitioner has enrolled three members in Revision Applications No.315 of 2012, 316 of 2012 and 324 of 2012, oral application for stay is rejected.

**(R. G. KETKAR, J.)**