

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6420 OF 2016

Hema Park Co-operative Housing
Society Ltd.

...Petitioner

Versus

The State Of Maharashtra
And Ors

...Respondents

....

Mr.S.S. Kanetkar, Advocate for the Petitioner.

Ms. Vaishali Nimbalkar, AGP for Respondents No.1 to 3.

Mr.Champawalla Waheed, Advocate for Respondent No.4.

....

With
Civil Application No.2507 of 2016
IN
Writ Petition NO. 6420 OF 2016

....

Mr.Champawalla Waheed, Advocate for the Applicant.

Mr.S.S. Kanetkar, Advocate for original Petitioner.

Ms. Vaishali Nimbalkar, AGP for original Respondents No.1 to 3.

....

CORAM : R. G. KETKAR, J.

DATE : 20th APRIL, 2017

P.C.

1. Heard Mr.S.S. Kanetkar, learned Counsel for the petitioner, Ms.Vaishali Nimbalkar, learned A.G.P. for respondents No.1 to 3 and Mr.Champawalla Waheed, learned

Counsel for respondent No.4, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 8.2.2016 passed by respondent No.3 Assistant Registrar, Co-operative Societies, 'S' Ward, Mumbai. By that order, respondent No.2 ordered registration of respondent No.4 Hema Park Tower Residents Co-operative Housing Society Ltd.

3. The Petition was instituted on 12.4.2016 and was heard for admission on 7.6.2016. Upon hearing Advocate for the petitioner and respondents No.1 to 3, this Court issued Rule and granted ad-interim order in terms of prayer clause (b) till 24.6.2016. On 24.6.2016 the matter was adjourned to 22.7.2016 and the ad-interim order was continued till then. On 22.7.2016, the matter was adjourned to 19.8.2016 and ad-interim order was continued till next date. On 19.8.2016, as none appeared on behalf of respondent No.4, this Court confirmed the ad-interim order in terms of prayer clause (b).

4. Respondent No.4 has taken out C.A. No.2507/2016 for vacating the interim order in terms of prayer clause (b) and in the alternative for fixing preemptory date of hearing for final

hearing of Writ Petition. Application is taken out principally on the ground that against the impugned order the petitioner has an equally efficacious alternate statutory remedy of filing appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') before the Divisional Joint Registrar. Accordingly the petition is taken up today for final hearing.

5. In support of this Petition, Mr. Kanetkar submitted that on 30.3.2000 Hema Park Co-operative Housing Society Ltd. was registered as per Section 9(1) of the Act consisting of five buildings. The proposal under Section 18 read with Rule 17 of the Maharashtra Co-operative Societies Rules, 1961 was submitted for bifurcation of the society. By order dated 25.6.2002, the draft order under Section 18 of the Act was issued by the Assistant Registrar. On 29.10.2004, final order of bifurcation was issued bifurcating (1) Hema Park Tower Residents Co-operative Housing Society Ltd. and (2) the petitioner herein, namely, Hema Park Co-operative Housing Society Ltd. Aggrieved by this Petition, the petitioner instituted appeal before the Divisional Joint Registrar. By order dated 6.6.2005, the Divisional Joint Registrar allowed the appeal and set aside the order dated 29.10.2004 thereby the proposal of

bifurcation of the petitioner society into two societies was rejected.

6. Mr. Kanetkar submitted that aggrieved by this decision, respondent No.4 preferred Revision Application No.353/2005 under Section 154 of the Act before the State Government. By order dated 5.10.2006, Revision Application was dismissed thereby upholding the order dated 6.6.2005 passed by the Divisional Joint Registrar. Aggrieved by this decision, respondent No.4 instituted Writ Petition No.7952/2006, which was admitted and the interim order was refused. He submitted that pending that Petition, respondent No.4 filed proposal for registration of Hema Park Towers Resident Co-operative Housing Society Ltd. By the impugned order, the Assistant Registrar has approved the proposal for registration and accordingly certificate of registration was issued on 8.2.2016. He submitted that Writ Petition No.7952/2016 is withdrawn by the fourth respondent on 15.6.2016 after passing of the impugned order. He further submitted that respondent No.4 is not paying the maintenance charges as also not handing over the record.

7. On the other hand, Mr. Waheed submitted that against the impugned order dated 8.2.2016, the petitioner has an equally efficacious alternate statutory remedy of filing appeal under Section 152 of the Act before the Divisional Joint Registrar. He further submitted that right from 1999, respondent No.4 is paying the property taxes directly to the Corporation and also is separately maintaining the building. He further submitted that the Petition raises several disputed questions of facts.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, this Petition challenges the order dated 8.2.2016 passed by the Assistant Registrar, Co-operative Societies, 'S' Ward, Mumbai. Against that order, the petitioner has an equally efficacious alternate statutory remedy of filing an appeal before the Divisional Joint Registrar, Co-operative Societies, Mumbai. In view thereof, it is not necessary to examine the validity of the impugned order, thereby permitting the petitioner to prefer appeal under Section 152 of the Act challenging the impugned order.

9. Mr. Kanetkar states that within four weeks from today, the petitioner will file an appeal under Section 152 of the Act and time spent by the petitioner in prosecuting this Writ Petition from 12.4.2016 till date may be excluded and the Appellate Authority may be directed to decide the appeal on merits and not to dismiss the appeal on the ground that it is barred by limitation. He further submits that interim order granted by this Court on 7.6.2016 may be continued during pendency of the appeal.

10. Ms. Nimbalkar states that the Appellate Authority will decide the appeal in accordance with law within three months from filing of the appeal.

11. In view thereof, the Petition is disposed of in the following terms :

- (i) The petitioner shall file an appeal under Section 152 of the Act challenging the impugned order dated 8.2.2016 passed by the Assistant Registrar, Co-operative Societies, 'S' Ward, Mumbai. The petitioner shall serve copy of appeal on respondent No.4 and respondent No.4 shall enter its appearance. If the appeal is presented within four weeks

from today, the Appellate Authority shall not dismiss the appeal on the ground that it is barred by limitation and shall exclude the time spent by the petitioner in prosecuting Writ Petition from 12.4.2016 till date.

- (ii) Interim order dated 7.6.2016 as confirmed on 19.8.2016 shall remain in force during pendency of the appeal.
- (iii) The Appellate Authority, namely, Divisional Joint Registrar, is requested to decide the appeal in accordance with law after giving notice to all the concerned parties within three months from filing of the appeal.
- (iv) All contentions of the parties on merits are expressly kept open.
- (v) Rule is made absolute in aforesaid terms with no order as to costs.
- (vi) In view of disposal of the Petition, Civil Application No.2507/2016 does not survive and same also stands disposed of. Order accordingly.

(R. G. KETKAR, J.)