

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 5897 OF 2013

Shri Khimji Kheraj Shah

....Petitioner

Vs.

**M/s. Punarniman Co-operative
Housing Society Ltd. and Ors.**

....Respondents

Mr. P.B. Shah i/b. Ronak Shah & Co. for Petitioner
Mr. S.D. Rayrikar, AGP for Respondent Nos.2 and 3

CORAM : M.S. SANKLECHA, J.
MONDAY, 27TH NOVEMBER, 2017

P.C.

1. On 13th November, 2013, the following order was passed :

“P.C.

1. *None appears for Respondent No.1. Mr. Shah, learned counsel appearing for the Petitioner states that Respondent No.1 has been served and he undertakes to file an affidavit of service to the above fact within a week from today.*

2. *This petition challenges the order dated 12th January, 2012 passed by the Divisional Joint Registrar, Co-operative*

Societies, Mumbai. By the impugned order, the Petitioner's revision application from an order of the Deputy Registrar, rejecting the Petitioner's application for membership under section 23 of the Maharashtra Co-operative Societies Act, 1960 was upheld.

3. Prima facie it appears that the impugned order is perverse as it has been passed contrary to the documents on record.

4. In the above view, the parties are put to notice that the petition is likely to be disposed of at the stage of admission.

5. The Petitioner is also directed to give fresh notice to Respondent No.1 informing him about the next date and also serve the copy of the order along with notice upon the Respondents. Thereafter file affidavit of service.

S.O. to 27th November, 2017.”

2. Mr. Shah, learned counsel appearing for the Petitioner filed an affidavit dated 27th November, 2017 of Mr. Dhiraj K. Gala stating that Respondent No.1 through its Chairman has been served the above order dated 13th November, 2017. Despite notice, none appears for Respondent No.1.

3. This petition, under Article 227 of the Constitution of India, challenges the order dated 12th January, 2012 passed by the Divisional Joint Registrar

under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (Act). The impugned order dated 12th January, 2012 dismissed the Petitioner's revision application filed challenging the order dated 4th May, 2008 passed by the Deputy Registrar-'A' Ward of the Co-operative Societies, Mumbai. Thus upholding the rejection of the Petitioner's application for membership of the Respondent No.1 Society under Section 23(2) of the Act. This was consequent to Respondent No.1 Society refusing to admit the Petitioner's as its member under Section 22 of the Act.

4. On 11th July, 2013, a notice before admission was issued by this Court. None appears for Respondent No.1 although served by Court notice on 4th April, 2014.

5. The challenge in this petition arises in the backdrop of the following fact that Respondent No.1 Society is formed by occupants of a tenanted building who formed the co-operative society under the MHADA Scheme. This for reconstruction/redevelopment of the building on conversion of the tenancies to ownership by tenants tendering 100 months rent.

6. The Petitioner had been inducted as a tenant of Shop No.8 existing in a building on land bearing No. 100-104, Bora Bazar Street, For, Mumbai, (suit

premises) prior to 1993. In support, the Petitioner has annexed the rent receipts issued in respect of Shop No. 8 (Originally numbered as Shop No.1 in the suit premises), by the original landlady Mrs. Shobha A. Shah.

7. It is the case of the Petitioner that the orders of both authorities are perverse inasmuch as it has not dealt with the basic contention of the Petitioner that it has obtained occupancy rights (tenancy) to the Shop No. 8 on the suit property from the original landlady, to whom the earlier tenant Mr. Vithal Kamat had already surrendered his tenancy. This tenancy was obtained by the Petitioner prior to 1993. The evidence in support of the same i.e. rent receipts of 1993 was filed before the authorities. Further it is submitted that Respondent No.1 Society has, in fact, issued receipt for payment of 100 months' rent by the Petitioner to convert the tenancy rights into ownership by payment of the same to MHADA.

8. On perusal of the order dated 4th may, 2008 passed by the Deputy Registrar, Co-operative Societies as well as the impugned order dated 12th January, 2012 passed by the Divisional Joint Registrar, I find that after recording the Petitioner's case, the same has not been dealt with so as to the reasons why the same is not acceptable. Both the above orders have

proceeded on the basis of Respondent No.1's contention that the Petitioner's rights to the suit premises, if any, only flow from the earlier tenant i.e. Mr. Vithal Kamat. Thus both the impugned orders dated 4th May, 2008 and 12th January, 2012 passed in revision have not dealt with the Petitioner's submission of its rights to the membership of Respondent No.1 – Society. This after recording the submission. In cases like this where the Authorities are called upon to decide a lis, it is incumbent upon it to consider the contention on facts of both the parties and rule on the same. An order of the Quasi Judicial Authority ignoring / not accepting the contentions urged by one of the parties without reason renders the order vulnerable as non speaking orders. In this case both the authorities have accepted the case of Respondent No.1 Society in its entirety without considering it in the context of the facts and submissions urged by the Petitioner making it an order which suffers from a flaw in the decision making process. Therefore, in this case, interference in my extraordinary jurisdiction is warranted.

9. Consequently on the above facts, not only the impugned order dated 12th January, 2012 passed by the Divisional Joint Registrar is quashed and set aside but also the order dated 4th May, 2008 passed by the Deputy Registrar –

'A' Ward is quashed and set aside. The Petitioner's application to the Deputy Registrar under section 23(2) of the Act being titled as Suit No. 8/2007 on the file of Deputy Registrar- 'A' Ward is restored for passing a fresh order after following the principles of natural justice.

10. The Petitioner is a senior citizen, over 75 years of age today. Therefore, it would be appropriate that the Deputy Registrar, Co-operative Societies, 'A' Ward should dispose of the application filed by the Petitioner being Suit No. 8/2007 as expeditiously as possible, preferably, within a period of twelve weeks from today.

11. Taking into account the age of the Petitioner, it is clarified that in case the Deputy Registrar, Co-operative Societies, 'A' Ward decides the application adverse to the Petitioner and if the Petitioner does file a revision application to the Divisional Joint Registrar, Co-operative Societies, then the revisional authority would endeavour to dispose of the revision application, if filed, as expeditiously as possible. This preferably within a period twelve weeks from the date of filing of the revision application, if any.

12. The writ petition is disposed of in the aforesaid terms. No order as to costs.

Parties to act upon copy of the order authenticated by the Associate of this Court.

[M. S. SANKLECHA, J.]