

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5814 OF 2017

Dhun Apartments Flat Owners
Co-op. Housing Society Ltd., .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

Mr. Shishir Joshi i/b. Ms. Bhakti Jogal, for the Petitioner.
Mr. S. H. Kankap, AGP, for Respondent Nos. 1 and 3.
Ms. Mallika Taly i/b. Ms. Anupama Gawde, for Respondent No.2.

CORAM: M.S.SANKLECHA, J.
DATE : 3rd OCTOBER, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 28th April, 2017 under passed by the Joint Sub-Registrar, Co-operative Society, Mumbai under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (Act). By the impugned order dated 28th April, 2017, the Petitioner-Society was directed to grant membership to Respondent No.2 while keeping that the issue of car parking raised by Respondent No.2 before him open, to be challenged in an appropriate proceedings. This on the ground that the issue of car parking is a distinct and a different issue from that of membership of the Petitioner-Society. It observed that the same could be urged by the Petitioner-Society by approaching the Co-operative Court.

2 Briefly, the facts leading to this Petition are that the Petitioner is the Co-operative Society, registered under the Act. The father of Respondent No.2 was a member of the Petitioner-Society and by Deed of Gift dated 20th August, 2016, transferred his shares in the Petitioner-Society to the Respondent No.2. This Deed of Gift was duly supported by execution of the necessary prescribed transfer form for shares under the Act. Consequent to the above execution of transfer forms, the Respondent No.2 applied for membership of the Petitioner-Society in the prescribed form to the Petitioner-Society on 24th August, 2016.

3 By communication dated 27th October, 2006, the Petitioner-Society refused membership to Respondent No.2 and also his right to use parking space gifted to him under the deed. Being aggrieved by the above refusal, the Respondent No.2 preferred an appeal on 28th November, 2016 to the Registrar, Co-operative Society under Section 23(2) of the Act. This appeal was for grant of membership of Petitioner-Society as well as right to use the parking space available to him by virtue of the membership/gift deed.

4 By the impugned order dated 28th April, 2017, the Respondent No.3- Registrar partly allowed the appeal. It directed the Petitioner-Society to grant membership to Respondent No.2. So far as the issue of car parking space is concerned, the impugned order does not adjudicate upon the same by pointing out that car parking issue is a distinct issue from that of the membership of the society. Therefore, the Petitioner-Society was granted liberty to approach the Co-operative Court so as to assert/ establish its rights with regard to the car parking in the

dispute with Respondent No.2.

5 The Petitioner-Society has challenged the impugned order dated 28th April, 2016 on the ground that the transfer of membership could not have been made on the basis of the deed of gift dated 20th August, 2016. The impugned order could not have bifurcated the issue of open parking space from that of the membership of Society. Further, the issue of open car parking is a right which could not be transferred as it is a part of the common area of the building as held by the Apex Court in ***Nahalchand Laloochand Pvt. Ltd., v/s. Panchali Co-operative Society Ltd., 2010 (9) SCC 536.***

6 The membership of the Petition-Society is being transferred on the basis of the Transfer Forms as prescribed under the Act which were duly executed by the transferor and transferee. The transfer of membership is not on the basis of the gift deed which is a document underlying the transfer. Further, in any event, as rightly held by the impugned order, the Respondent has no power to declare a gift deed void and/or against a public policy, as urged by the Petitioner.

7 The grievance of the Petitioner that the issue of car parking space was not decided by the impugned order along with the membership issue, is no longer res integra. This in view of the fact that this Court had occasion to deal with an identical dispute in ***Sneh Sadan Co-op. Hsg. Soc. Ltd. v/s. State of Maharashtra and Others AIR 2004 Bombay 315*** and ***Charkop Bhavneet Co-operative Housing Society Ltd., v/s. Smt. Arti Ismail & Others (W. P. (St.) No.17897 of 2015)*** decided on 20th September, 2016 had occasion to deal with an identical issue and an identical grievance of the Petitioner-Society before this Court was,

rejected. In fact, in *Sneh Sadan Co-op. Hsg. Soc. Ltd.*, (supra), this Court observed as under:-

“
Merely because predecessor in-title of the Respondent Nos.1 and 2 to create interest in favour of the Respondent Nos.1 and 2 in respect of those parking spaces cannot be ground for refusing membership to the Respondent Nos. 1 and 2. Authorities below have adopted correct approach in the matter. The issue in respect of authorization of predecessor in-title of the Respondent Nos.1 and 2 to create interest in favour of the Respondent Nos.1 and 2 as regards parking spaces shall have to be dealt with separately and cannot be clubbed with right of the Respondent Nos.1 and 2 to claim membership of the society. It is informed that the Petitioner-Society has already taken up proceeding as regards the creation of interest in relation to parking spaces in favour of the Respondent Nos.1 and 2. It would be open for the Petitioner-Society to pursue these proceedings or adopt appropriate proceedings as regards grievance of the society as permissible in law and instant orders passed by the Respondent-Authorities shall not be impediment for consideration of such issue.”

(emphasis supplied)

8 Mr. Joshi, learned Counsel appearing for the Petitioner submits that both the above decisions of this Court have been rendered without the Court's attention being invited to the decision of the Apex Court in *Nahalchand Laloochand Pvt. Ltd.*, (supra).

9 Mr. Joshi also placed reliance on *Nahalchand Laloochand Pvt., Ltd.*, (supra) – wherein the Court has held that stilt parking space is not a sale-able area by the Promoter to the buyer. It is a common area which would belong to the organization to which the building is conveyed. According to him, the aforesaid decision would make a material difference in the conclusion arrived at by earlier decisions of this Court, referred to above.

10 However, the aforesaid decision of the Apex Court, to my

mind, would not have any impact in the facts of this particular case. This is so as the impugned order has not adjudicated/ ruled on the issue of parking space as contended by the Petitioner-Society. All it does is grant a membership of the Petitioner-Society to Respondent No.2 and leave the issue of car parking space, to be urged before the Co-operative Court. This, in case, the Petitioner-Society is of the view that the membership of the Society would not by itself lead to an entitlement to the car parking space as claimed by the member. It is made clear that the application of the decision of the Apex Court in Nahalchand Laloochand Pvt. Ltd., (supra) has not been examined by me. It is open to the Petitioner-Society to urge this issue and as and when it raises it before the appropriate forum, it would be dealt with by the Authority/ Forum concerned.

11 In the above view no interference under Article 227 of the Constitution of India, is warranted.

12 Accordingly, **Petition disposed of** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)