

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 10862 OF 2014****Sumangal Veena Co.Operative Hsg.Soc.Ltd. Petitioner****VERSUS****Divisional Joint Registrar & Ors. Respondents****ALONGWITH****CIVIL APPLICATION NO. 2885 OF 2017****IN****WRIT PETITION NO. 10862 OF 2014****Mrs.Jyoti S.Chhabria Applicant/
Org.Resp.No.3****IN THE MATTER BETWEEN****Sumangal Veena Co.Operative Hsg.Soc.Ltd. Petitioner****VERSUS****Divisional Joint Registrar & Ors. Respondents****Mr.Sagar G.Talekar for the Petitioner.****Mr.S.H.Kankal, A.G.P. for the State – Respondent nos. 1 and 2.****Mr.M.S.Lad for the Respondent no.3 and for the Applicant in
CAW/2885/2017.****CORAM : R.D.DHANUKA, J.****DATE : 18th DECEMBER, 2017****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 20th September,2014 passed by the respondent no.1 i.e. Divisional Joint Registrar, and order

dated 29th December,2012 passed by the Deputy Registrar thereby directing the petitioner to issue share certificate in respect of the premises in question in favour of the respondent no.3.

2. Mr.Mohanlal S.Chhabria was the occupant in respect of the shop no.1 situated in the petitioner society who expired on 13th September,1990 without executing any Will or nomination in respect of the shop in question. The respondent no.3 is daughter in law of late Mr.Mohanlal S.Chhabria. Upon demise of the said Mr.Mohanlal S.Chhabria, the respondent no.3 placed reliance on the Memorandum of Understanding dated 5th June, 1993 executed between the legal heirs of late Mr.Mohanlal S.Chhabria and produced the same before the petitioner society. The society however refused to grant membership to the respondent no.3 and insisted for succession certificate from the competent authority. The respondent no.3 therefore filed an appeal under section 23(2) of the Maharashtra Co-operative Societies Act, 1960 before the respondent no.2.

3. The respondent no.2 passed an order on 7th February,2012 directing the society to issue share certificate to the respondent no.3 in respect of the said shop bearing no.1. The petitioner society thereafter filed a revision application before the respondent no.1 mainly on the ground that the arrangement/MOU/division of assets of Mr.Mohanlal S.Chhabria was certified before the Metropolitan Magistrate and did not have any legal status. The respondent no.1 passed an order on 20th September,2014 dismissing the revision application filed by the petitioner and upheld the order passed by the respondent no.2.

4. Learned counsel appearing for the petitioner submits that the respondent no.3 did not produce any no objection from all the legal heirs of the erstwhile occupant Mr.Mohanlal S.Chhabria and so called MOU produced before the society by the respondent no.3 did not have any legal status. He submits that the respondent no.2 thus could not have directed the respondent no.3 to issue share certificate in favour of the respondent no.3. He submits that the respondent no.1 ought not to have confirmed the order passed by the respondent no.2 and ought to have set aside the said order.

5. Learned counsel for the respondent no.3 on the other hand submits that the appropriate documents had been already produced before the society for seeking membership and for transfer of the share certificate. He submits that the said Mr.Mohanlal S.Chhabria was in occupation of the said shop. Upon his demise, the same was occupied by the respondent no.3. He submits that after 18 years, the petitioner raised an issue that the proper documents were not submitted by the respondent no.3. He submits that the society has already issued the maintenance receipt in favour of the respondent no.3 and had filed the proceedings under section 101 of the Maharashtra Co-operate Societies Act, 1960 against the respondent no.3. He submits that both the authorities have considered this aspect in great detail. Learned counsel submits that the respondent no.3 has also submitted indemnity bond in favour of the society.

6. A perusal of the orders passed by the two authorities clearly indicates that both the authorities have given detailed reasons while granting reliefs in favour of the respondent no.3. It is not disputed that the petitioner had also filed an application under section 101 of the Maharashtra Co-operative Societies Act, 1960 against the respondent no.3 and has also issued maintenance receipt. The respondent no.3 has already submitted an indemnity bond in favour of the society in the event of any claim if any made in respect of the suit shop by any of the legal heirs. In view of these admitted facts, in my view there is no infirmity in the orders passed by the two authorities below. If any claims are received by the society in respect of the shop in question from any of the other legal heirs, the petitioner can invoke the said indemnity bond against the respondent no.3. With this clarification, no interference is warranted in the orders passed by the two authorities below. Writ petition is accordingly dismissed. No order as to costs.

7. In view of disposal of the writ petition, civil application does not survive and is accordingly disposed of.

(R.D.DHANUKA, J.)