

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9696 OF 2016
WITH
CIVIL APPLICATION NO.1159 OF 2017
IN
WRIT PETITION NO.9696 OF 2016**

The Shivprasad Co-op Housing Society Ltd. ... Petitioner
Vs
The State of Maharashtra & Ors. ... Respondents

...
Mr. Rajaram V. Bansode for the Petitioner.
Ms. Vaishali Nimbalkar, AGP for the State.

CORAM : M. S. SONAK, J.
DATE :28 SEPTEMBER, 2017

P.C. :

1. Not on board upon mentioning taken on board.
2. Heard Mr. Bansode for the petitioner. The challenge in this petition is to the order of the Registrar and the Hon'ble Minister Cooperative, directing the petitioner society to enroll the respondent No.3 as the member of the society and to treat her as such.
3. Mr. Bansode submits that in this case the original owner of the suit premises Mr. Palanpuri has written a letter to the society and also filed

a police complaint stating that he has, never sold the suit premises in favour of the respondent No. 3. Mr. Bansode submits that in such a situation, no direction could have been issued to the Petitioner to enroll the respondent No. 3 as a member of the society.

4. Mr. Bansode further submits that there is no formal application made by the Respondent No. 3 and therefore, no direction could ever have been issued for enrollment of the respondent No. 3 as a member of the society.

5. Mr. Bansode further submits that the administrator, without any jurisdiction, had issued certain share certificate to the respondent No. 3. He submits that administrator, clearly lacks jurisdiction to issue share certificate and the two authorities, have erred in relying upon this circumstance to make the impugned order.

6. Having considered the submission of the learned counsel for the petitioner and having perused the impugned order on the record, there is no case made out to interfere with the impugned order in the exercise of the extraordinary jurisdiction under Article 227 of the Constitution of India.

7. The society, in this case, should really not concern itself with

the private dispute between Palanpuri and the respondent No. 3. The circumstance that the society enrolls the respondent No. 3 as a member of the society, is hardly a circumstance which will prejudice the said Mr. Palanpuri, in case, Mr. Palanpuri indeed has any right and indeed takes out appropriate proceeding before the appropriate forum to assert or enforce such rights. However, the petitioner society, cannot be permitted to deny membership to the respondent No. 3 by taking cudgels on behalf of the said palanpuri.

8. In this case, it is not possible to accept Mr. Bansode's contention as regard the absence of any formal application. Considering the manner in which, the society, has denied membership to the respondent No. 3, it is very much possible that no opportunity of making such formal application was offered to respondent No. 3 and in any case, formal application may have not been accepted by the respondent No.3. In such circumstance, the two authorities were entitled to intervene and there is no jurisdictional error in the making of the impugned order.

9. In this case, it is not necessary to go into the issue of jurisdiction of the administrator in issuing share certificate to the respondent No. 3. Even if such share certificates had not been issued to

respondent No.3, the society, had no legitimate reason to deny her membership. The private dispute, if any, between Mr. Palanpuri and respondent No.3 in facts and circumstance of the present case, is really of no concern of the petitioner society.

10. At this stage, the learned counsel for the society submits that in case the respondent No. 3 makes a formal application and pays the necessary transfer charges, the petitioner society will consider such application in accordance with law.

11. Considering the manner in which the society has dealt with the matter, his request cannot be regard as some innocuous request. Obviously, the petitioner society, wishes to recommence another innings of litigation so as to deny the respondent No. 3, the reliefs, which have been granted by the two authorities to her.

12. In case, any charges are indeed payable in terms of the bylaws of the society, the petitioner society, may first enroll the respondent No. 3 as a member and thereafter, raise demands in accordance with law for recovery of the same. However, in the facts of the present case, under no circumstances, the issue of enrollment of respondent No. 3 may be linked with the issue of payment of any such charges, if any, permissible under

the law.

13. This petition is therefore dismissed. There will be no order as to costs.

14. The civil application does not survive and the same is also disposed of.

(M. S. SONAK, J.)