

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

**WRIT PETITION NO.1051 OF 2015**

Dnyaneshwar Nagar Co-operative  
Housing Society Ltd., through it  
authorized representative

Mr.Sudhir D. Naik,

... Petitioner

vs

Mr.Inderkumar Ahuja and ors.

... Respondents

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Mr.Harshad Rajeshirke for the Petitioner.

Mr.D.R.Talankar for Respondent Nos.1 and 2.

Mrs.A.D.Vatkar, AGP for Respondent Nos.3 to 6.

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**CORAM : K.K.TATED, J.**

**DATE : JULY 24, 2017.**

**P.C. :**

1. Heard learned counsel for parties.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 27<sup>th</sup> June, 2014 passed by the Respondent No. 5 i.e. Minister, Co-operation, Mantralaya, Mumbai in Revision Application No.551 of 2013 directing Petitioner to transfer the share certificates of flat No. 19 in the name of Respondent Nos. 1 and 2 jointly as per the order dated 5<sup>th</sup> July, 2010 passed by Deputy Registrar of Co-operative Societies, F/North Division Ward, in Application No. 3 of 2010.

3. The main contention of the Petitioner is that the original owner of the suit flat Shivaji Jagdale died without making any nomination. Thereafter, his wife Kamal Shivaji Jagdale executed the sale deed dated 23<sup>rd</sup> April, 2008 in favour of Respondent Nos. 1 and 2. He submits that widow of original owner Kamal Shivaji Jagdale never made any application for joining her as a member of the society. He further submits that even if it is taken into consideration that as per the order dated 18<sup>th</sup> January 2007 passed by High Court in Misc. Petition No. 53 of 2006 and order dated 27<sup>th</sup> March, 2007 in Notice of motion No. 33 of 2007 in Misc. Petition No. 53 of 2006 then also suit property can not be transferred in the name of Respondent because of bar under Section 29(2a) of said Act. He submits that as per Section 29(2a) of the Maharashtra Co-operative Societies Act flat can not be sold by her within one year from the date of transferring the shares in her name. Therefore, the impugned order passed by the Authority is required to be set aside directing Petitioner to transfer the share certificates in the name of Respondent Nos. 1 and 2.

4. The learned Advocate Mr.D.R.Talankar Appearing on behalf of Respondent Nos. 1 and 2 filed compilation of documents on record. He submits that in the present proceedings Smt. Kamal Shivaji Jagdale was declared as owner of the suit property in Misc. Petition No. 53 of 2006 by the Hon'ble High Court by order dated 18<sup>th</sup> January, 2007. He

submits that the widow of original owner of the flat executed registered sale deed dated 23<sup>rd</sup> April, 2008 in favour of Respondent Nos. 1 and 2. He further submits that Smt. Kamal Shivaji Jagdale filed affidavit dated 24<sup>th</sup> April, 2008 for transferring the said flat in favour of Respondent Nos. 1 and 2. Smt. Kamal Shivaji Jagdale also executed an affidavit cum declaration dated 2<sup>nd</sup> August, 2008 in favour of the Respondents confirming that she sold the suit property to the Respondent Nos. 1 and 2. He submits that Respondent Nos.1 and 2 completed all the formalities for becoming member, therefore the authority by its order dated 5<sup>th</sup> July, 2010 directed to transfer share certificates in favour of the Respondents. He further submits that inspite of the said order the Petitioner-society failed and neglected to do so. Hence, the Respondents moved application before the authority for execution of the said order. He submits that the authority entered Respondent Nos. 1 and 2's name in the members register of the society as a member on 8<sup>th</sup> July, 2011. He submits that in view of subsequent developments nothing survive in the present Petition and same is required to be dismissed with costs.

5. I heard both the parties. It is to be noted that in the present proceedings the wife of original owner Shivaji Jagdale has declared owner of the suit flat by High Court in Misc. Petition No. 53 of 2006. Respondent Nos. 1 and 2 submitted the registered Sale Deed dated 23<sup>rd</sup> April, 2008, affidavit of smt.

Kamal Shivaji Jagdale dated 24<sup>th</sup> April, 2008, Indemnity Bond given by the owner dated 24<sup>th</sup> April, 2008 in favour of the Petitioner-society for transferring the flat in the name of Respondent Nos. 1 and 2 and also executed Application cum declaration dated 2<sup>nd</sup> August, 2008 confirming that the said flat was sold to Respondent Nos. 1 and 2 and all order relevant documents were filed with the Petitioner-society. In spite of all these things, the Petitioner raised the objection under Section 29(2a) of the said Act. It is to be noted that in the present proceedings previous owner executed all the relevant documents for transferring the flat in the name of Respondent Nos. 1 and 2 and considering those documents the authority by its order dated 2<sup>nd</sup> July, 2010 rightly directed to transfer the flat. In any case the Petitioner failed to a person who is claiming ownership of the flat as party Respondent. Considering these facts, I do not find any substance in the present Petition.

6. Hence, Writ Petition stands dismissed. No order as to costs.

**(K.K.TATED, J.)**