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

WRIT PETITION NO. 11020 OF 2016

The Vashi City Mall Premises (Proposed) CHS Ltd.

& Ors.

...Petitioners

Vs.

The Minister for Co-operation & Ors.

...Respondents

Mr. K.T. Bubu i/b. Mr. Sachin P. Borhade for the Petitioners

Mr. M.R. Phal for Respondent No.2

Ms. Aparna Vhatkar, AGP for State Respondent Nos. 1 to 4

CORAM : M.S. KARNIK, J.

DATED : 23RD JANUARY, 2017

P.C. :

By way of the present Petition the Petitioners are challenging the impugned order dated 26th July, 2016 passed by the Joint Registrar Co-operative Societies (CIDCO), Navi Mumbai.

2. It is the petitioners' case that the respondent No.3 the Developer completed the construction of building known as Mayuresh Trade Center in the year 1998. The occupation certificate was issued on 8th June, 1999. Since the society was not formed the unit purchasers / petitioners herein issued notice to

the builder / respondent no.3. Thereafter on 1st February, 2016 the unit purchasers / petitioners had called for a meeting to discuss about the formation of the proposed society. After a detailed discussion the Petitioners decided the name of the Petitioner Society as “City Mall Premises” and also decided the name of the Chief Promoter in the formation of the proposed society.

3. On 3rd March, 2016 the Chief Promoter of the society had submitted application for name reservation and opening bank account in the name of the proposed society to the respondent No.2. On 11th March, 2016 the Joint Registrar (CIDCO), Navi Mumbai issued permission letter dated 11th March, 2016 and approved / reserved the name of the proposed society and granted permission of opening bank account in the name of the proposed society in the District Co-operative Bank. Accordingly on 17th March, 2016 the Petitioners have opened the bank account in the Maharashtra State Co-operative Bank, Vashi as per the permission of respondent No.2.

4. On 23rd March, 2016 the Chief Promoter of the proposed society issued notice dated 23rd March, 2016 by intimating the name reservation and opening of bank account and also demanded certain documents from the builder / respondent no.3 and requested for co-operation for the formation of the petitioners' proposed society.

5. The grievance of the petitioners is that the developer went ahead and registered his private limited company on 19th April, 2016 and none of the unit purchasers / petitioners were informed by the developer regarding this, nor their consent taken before formation of the same. The respondent no.3 after forming his private limited Company on 19th April, 2016 replied to the notice issued by the petitioners and informed them that the respondent no.3 had already formed the private limited company, therefore, the petitioners should not proceed with the formation of the registration of co-operative society. It is only on 2nd May, 2016 that the respondent no.3 issued intimation letter to all the unit purchasers / petitioners regarding the incorporation of company

M/s. Mayuresh Trade Center Units Purchasers Private Limited and the units purchasers got to know of this development only after getting the said letter along with application form.

6. Respondent No.2 heard the matter on 6th May, 2016 and thereafter on 14th June, 2016.

7. The main objection of the petitioners is that once the respondent no.2 had entertained their application and called upon them to furnish all the relevant documents regarding the proposed society by communication dated 11th March, 2016, the respondent no.2 ought not to have entertained the application filed by respondent no.3. Moreover in the submission of the petitioners once the order dated 11th March 2016 is already passed by respondent no.2 which is in the nature of quasi judicial order, the respondent no.2 was then not justified in entertaining the application of respondent no.3. He further submits the impugned order dated 26th July, 2016 virtually amounts to reviewing the order dated 11th March, 2016, which is not permissible in law.

8. The learned Counsel for respondent no.3 developer opposed the petition. According to him the order dated 11th March, 2016 is only an intimation regarding the proposed name which is reserved and is not in the nature of a final order and therefore, respondent no.2 was justified in entertaining the application made by the respondent no.3. Moreover as no final order is made in favour of the petitioner, the impugned order cannot be said to be a review of the earlier order.

9. According to the learned Counsel for the respondent no.3 the impugned order does not call for any interference. The learned AGP appearing for respondent no.2 supported the impugned order.

10. Having heard learned Counsel for the respective parties I am of the view that the matter needs to be remanded back to the Divisional Registrar, Co-operative Societies, North Mumbai.

11. A reading of the impugned order indicates that the same is a non-speaking order. Various contentions raised by the

petitioners more specifically that the earlier order of 11th March, 2016 being quasi judicial order and therefore, the same cannot be upset in the manner as is done by respondent no.2 has not been dealt with and considered.

12. In these circumstances I am of the view that the respondent no.2 may give a fresh opportunity of hearing to the petitioners as well as respondent no.3 and pass a brief reasoned order. Hence, the following order:

1. Order dated 26th July, 2016 passed by respondent no.2 is quashed and set aside.
2. Respondent no.2 to hear the petitioners and respondent no.3 afresh and pass a fresh reasoned order within a period of twelve weeks.
3. Parties to appear before respondent no.2 on 6th February, 2017 at 11 a.m.

4. All contention on merits are kept open and the parties are permitted to produce any further documents in support of their claim. I have not expressed any opinion on the merits of the rival contentions.

5. The Petition is disposed of accordingly.

(M.S. KARNIK, J.)