

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

WRIT PETITION NO.10431 OF 2014

**Vaikunth (Andheri) Co-operative Housing
Societies**

..Petitioner

Versus

The State of Maharashtra and others

..Respondents

Mr. A. K. Patil for the Petitioner.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 to 3.

**Mr. A. Y. Sakhare, Senior Advocate a/w Mr. R. S. Mirpuriya i/by Mr.
Ajay David for the Respondent No.4.**

CORAM : R. M. SAVANT, J.

DATE : 8th MARCH, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 18.03.2014 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By the said order, the delay in filing the Revision Application came to be condoned and thereafter the Revision Application filed by the Petitioner society came to be dismissed. The dispute in the above Petition is as regards the claim for membership made by the Respondent No.4 herein.

2 The Respondent No.4 herein claims to have purchased the ground floor of a bungalow from the executors of the will of the original owner one Smt. Madhurikaben Jyotindra Mehta in the year 1992. The said bungalow was constructed in or about the year 1941. The area of the

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ground floor flat is about 1810 sq.ft. However the Respondent No.4 claims to have purchased an area of 2450 sq.ft. It is not necessary for this Court to go into the said aspect in the instant proceedings. The Respondent No.4 applied to the Petitioner society on 30.10.1993 for transfer of shares of the society in her name from the name of the predecessor in title of the said flat. It seems that the Petitioner society vide letter dated 27.01.1994 communicated to the Respondent No.4 that there is discrepancy in the area of the flat mentioned in the application and requested the Respondent No.4 to rectify the said mistake and resubmit the transfer forms. It seems that the Petitioner addressed a letter dated 13.03.1995 to the Municipal Corporation of Greater Mumbai to remove the alleged unauthorized construction carried out by the Respondent No.4 which according to the Petitioner society was in the common area of the society. In view of the fact that her application for membership was not being considered, the Respondent No.4 preferred an Appeal being No.3 of 2013 before the Deputy Registrar of Co-operative Societies, K/West Ward, Mumbai. Suffice it would be to state that the said Appeal came to be allowed by the Deputy Registrar by order dated 05.04.2013 by recording that the Respondent No.4 was required to be granted membership qua the flat in question.

3 Aggrieved by the said order dated 05.04.2013 the Petitioner

society carried the matter by way of a Revision before the Divisional Joint Registrar. The said Revision Application was numbered as Revision Application No.372 of 2013. The Revisionary Authority i.e. Divisional Joint Registrar has by the impugned order dated 18.03.2014 dismissed the Revision. The gist of the reasoning of the Revisionary Authority was that the membership to the Respondent No.4 could not be denied on the grounds on which the Petitioner society seeks to deny membership to the Respondent No.4. The Divisional Joint Registrar has made the following observation in the impugned order dated 18.03.2014 :-

“Therefore considering the ratio of the aforesaid judgment, the Authorities under M.C.S. Act 1960 does not have jurisdiction to determine the validity of Agreement/document and also any unauthorized construction or encroachment. Hence, the Applicant society may approach competent Authority/Court for their redressal.”

Prior to making the said observation the Divisional Joint Registrar has referred to the judgments of the Learned Single Judges of this Court in Harish Commercial Premises Co-op Soc. Ltd. Vs. Smt. Varsha Dinesh Joshi and others (2006 CTJ 544) and Videocon Applicances Ltd. Vs. Maker Chamber V. Premises Co-op. Society Ltd. in Writ Petition No.7472 of 2007, wherein it has been held by a Learned Single Judge of this Court that membership cannot be rejected on the ground of alleged illegal construction etc.

4 The Petitioner society seems to have a grievance as regards the use and claim made by the Respondent No.4 as regards the open area which is adjacent to her flat on the ground floor. As indicated above, it is not for the authorities under the Maharashtra Co-operative Societies Act to go into the said aspect in the instant proceedings concerning the claim for membership of the Petitioner society made by the Respondent No.4. It is required to be noted that though the Respondent No.4 has purchased the ground floor of the bungalow in the year 1992 she is still awaiting membership of the Petitioner society. If the Petitioner society has any grievance about the use of the said open area by the Respondent No.4, then as observed by the Revisionary Authority, it is open for it to file appropriate proceedings in respect of the same. However the Respondent No.4 cannot be denied membership on the said ground.

5 In my view, therefore, the concurrent orders passed by the Deputy Registrar, Co-operative Societies, K/West Ward and the Divisional Joint Registrar, Co-operative Societies, Mumbai Division Mumbai, do not merit any interference in the writ jurisdiction of this Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]