

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

**CIVIL APPLICATION NO.3031 OF 2016
IN
WRIT PETITION NO.10681 OF 2015
ALONGWITH
CIVIL APPLICATION NO.3032 OF 2016
IN
WRIT PETITION NO.10682 OF 2015
ALONGWITH
CIVIL APPLICATION NO.3033 OF 2016
IN
WRIT PETITION NO.10684 OF 2015
ALONGWITH
CIVIL APPLICATION NO.3034 OF 2016
IN
WRIT PETITION NO.10685 OF 2015
ALONGWITH
CIVIL APPLICATION NO.3035 OF 2016
IN
WRIT PETITION NO.10686 OF 2015
ALONGWITH
CIVIL APPLICATION NO.3036 OF 2016
IN
WRIT PETITION NO.10687 OF 2015**

Davesh Jamnaprasad Vyas

..Applicant

IN THE MATTER BETWEEN

Kohinoor Co-operative Housing Society Ltd.

..Petitioner

Versus

Deputy Registrar Co-operative Societies and others

..Respondents

**Mr. Sharan Jagtiani a/w Mr. Ajay Panicker i/by Ajay Law Associates
for the Applicant/ original Respondent No.3.**

Mr. R. P. Behere for the original Petitioner.

Mr. S. H. Kankal, AGP for the original Respondent Nos.1 & 2.

CORAM : R. M. SAVANT, J.
DATE : 9th JANUARY, 2017

PC.

1 The above Civil Applications have been filed by the Respondent No.3 to the above Petitions. The above Civil Applications have been filed for various reliefs which are enumerated in prayer clauses (a) to (f) to the Civil Applications. However, the Learned Counsel appearing for the Applicant on instructions states that the Applicant is mainly pressing prayer clause (d) of the above Civil Applications which is to the following effect :-

“(d) Pending the hearing and final disposal of the subject Writ Petition, this Hon'ble Court be pleased to permit the Petitioner to attend all the general meetings of the society in respect of any matter pertaining to the property of Petitioner i.e. Shop No.A1, A2, A3, A4, B3 & B4 including the issue of redevelopment of the society building, which the Petitioner Society has taken up in the AGM held on 30.07.2016;”

2 The above Writ Petitions have been filed challenging the order passed by the Divisional Joint Registrar, Co-operative Societies, Konkan Division, by which order, the Revision Applications filed by the original Petitioner i.e. Kohinoor Co-operative Housing Society Ltd. came to be dismissed and resultantly, the order dated 06.02.2012 passed by the Deputy Registrar of Co-operative Societies directing the Petitioner society to make the Applicant a member in place of the deceased member who

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was his father came to be granted. The above Writ Petitions were admitted by a Learned Single Judge of this Court on 06.06.2016 and interim relief in terms of prayer clause (c) came to be granted. As a consequence, the order passed by the Divisional Joint Registrar as also the order passed by the Deputy Registrar directing membership to be granted to the Applicant came to be stayed. The cause for filing the above six Petitions was the fact that the Applicant has claimed membership of the society qua six shops which are in the building of the society. It seems that the construction of the building was completed long back around the year 1977-78 and it seems that the father of the Applicant was the contractor who was entrusted the construction of the building and who has constructed the said six shops. It seems that the father of the Applicant had sold shop Nos.B1 and B2 to some third parties who have also been conferred with membership of the Petitioner society. It is the case of the Applicant that his father was exercising rights as a member of the Petitioner society and in fact was at one time also the office bearer of the Petitioner society. It is also the case of the Applicant that the outgoings towards the said six shops were also being paid by the father of the Applicant and Applicant also continues to pay the same. The grievance of the Applicant is that relying upon the interim order passed by the Learned Single Judge of this Court in the above Petitions, the

Petitioner society is now depriving the Petitioner from participating in the affairs of the society as also depriving the Petitioner from enjoying other rights as a member.

3 Upon this, the Learned Counsel appearing appearing for the Petitioner society Mr. R. P. Behere would contend that the Petitioner society has a serious grievance as regards the grant of membership to the Applicant qua the six shops in question in view of the fact that it is the case of the Petitioner society that the said six shops are unauthorized as they are not part of the building plans. In so far as the confirmation of membership is concerned, the consideration ought to weigh with the authorities are now enunciated by various judgments of this Court including the judgment of this Court (R. M. Savant, J) reported in 2014(4) Mh.L.J. 938 in the matter of RNACC Ltd. Vs. Deputy Registrar, Co-operative Societies. In the said judgment, the judgments of the Learned Single Judges of this Court which were relied upon by the parties have referred to. However, it is not necessary for this Court to enter into the said arena whilst considering the above Civil Applications, for the relief sought vide prayer clause (d). Having regard to the background facts as above, in my view, it would be just and proper that pending the hearing and final disposal of the above Petition, the following further directions are issued :-

(I) The Petitioner society without prejudice to its rights and contentions in the above Petitions may issue notices of the general body meetings or special general body meetings of the society to the Applicant herein.

(II) The Applicant herein would be entitled to attend the general body meetings of the society, participate in the discussion that would take in the said meetings as also would be entitled to vote. However, his vote would be recorded if given by show of hands and kept separately and would not be taken into consideration for deciding the number of votes in favour or against any resolution.

(III) The Petitioner society without prejudice to its rights and contentions would also issue maintenance bills to the Applicant and the Applicant would also pay the same without prejudice to its rights and contentions in the above Petition.

(IV) It is made clear that none of the aforesaid would create any equities in favour of the Applicant.

(V) In the event any decision is taken by the society as regards redevelopment and the Applicant is held not to

be entitled to participate in the said redevelopment, it would be open for the Applicant to adopt such proceedings as are permissible in law to assail the decision of the society.

(VI) If the Applicant applies for copies of the minutes of the meeting of the general body meetings which have taken place in the past, then the Petitioner society may consider granting the same, as required to be done in respect of a regular member and also furnish copies of the minutes of the meetings held in future if applied for.

(VII) Needless to state that in so far as the prayers which are not pressed, the Applicant may adopt such remedies as are available in law for seeking the said prayers.

(VIII) It is clarified that interim reliefs in terms of prayer clause (c) would continue to operate.

4 The Civil Applications to accordingly stand disposed of.

[R.M.SAVANT, J]