

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

WRIT PETITION NO.14225 OF 2016

Mrs. Sneha Nitin Vanjare

..Petitioner

Versus

**Divisional Joint Registrar,
Co-operative Societies,
Mumbai Division and others**

..Respondents

Mr. S. V. Bane for the Petitioner.

Mr. S. D. Rayrikar, AGP for the Respondent Nos. 1 & 2.

CORAM : R. M. SAVANT, J.

DATE : 24th FEBRUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 07.11.2016 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By the said order, the Revision Application filed by the Respondent No.4 herein came to be allowed and resultantly, the order dated 26.02.2016 passed by the Assistant Registrar, Co-operative Societies came to be set aside and the matter came to be remanded back to the Assistant Registrar, Co-operative Societies, F/S Ward, Mumbai for fresh consideration.

2 The dispute appears to be in respect of the name of the Respondent No.4 being entered in the register of members of the Respondent No.3 society. The flat in question is flat No.A-64 in the

Respondent No.1 society which was standing in the name of the father of the Respondent No.4 and the Petitioner herein. The Petitioner is the married sister of the Respondent No.4. After the death of the father, the Respondent No.4 applied for transmitting the membership in his name. It appears that the Respondent No.4 was residing with the father in the said flat at the time of his demise. In terms of the application made, the flat was transferred in the name of the Respondent No.4 and the endorsement was accordingly made on the share certificates bearing Nos.486 to 490. The membership was transmitted to the Respondent No.4 on or about 25.08.2007. It appears that after the transmission, there was no objection till the end of January 2013. It appears that on 10.03.2013 the Respondent No.3 society informed the Respondent No.4 of an application dated 10.03.2013 received from the Petitioner herein stating that she alongwith other sisters have equal right in the suit flat after the death of their father and therefore Respondent No.3 society called upon the Applicant to submit his written explanation to the society. It seems that certain directions were issued by the authorities exercising powers under the Maharashtra Co-operative Societies Act directing the Respondent No.3 to remove the name of the Respondent No.4 as a member from the record of the society. This resulted in the Respondent No.4 filing an Appeal being No.144 of 2013 challenging the said direction

(11) -WP-14225-16.doc.

dated 28.05.2013. The said Appeal came to be allowed by order dated 24.11.2015 and thereby direction dated 28.05.2013 issued to the Respondent No.3 society came to be set aside. It seems that another sister of the Respondent No.4 made a complaint to the authorities under the Maharashtra Co-operative Societies Act, 1960. Pursuant to which complaint, a notice of hearing came to be issued to the Respondent No.4 on 03.12.2015. On the basis of the said complaint, the Assistant Registrar of Co-operative Societies i.e. Respondent No.2 herein passed an order on 26.02.2016 under Section 25A of the Maharashtra Co-operative Societies Act, 1960, thereby directing the Respondent No.3 to remove the name of the Applicant from the society's record on the ground that the Applicant is ineligible to be a member of the Respondent No.3 society.

3 Being aggrieved by the said order dated 26.02.2016 passed by the Respondent No.2 herein that a Revision Application came to be filed by the Respondent No.4, in which the impugned order dated 07.11.2016 came to be passed by the Divisional Joint Registrar, Co-operative Societies. The Divisional Joint Registrar as indicated above has remanded the matter back to the Assistant Registrar for a de-novo consideration. The gist of the reasoning of the Divisional Joint Registrar is that whilst passing the impugned order the Assistant Registrar has not given reasons as to why Sections 25 and 25A are applicable in the present

case. The Divisional Joint Registrar has also opined that the Assistant Registrar has not taken into consideration whether the procedure was followed by the Petitioner herein prior to filing the application under Section 25A of the said Act. The Divisional Joint Registrar i.e. Revisionary Authority has therefore found fault with the order passed by the Assistant Registrar. In my view, having regard to the mandate of Section 30 as also Rule 25 of the Maharashtra Co-operative Societies Act as also considering the fact that the Respondent No.4 is one of the heirs of the original member, it was necessary to consider as rightly observed by the Divisional Joint Registrar whether Sections 25 and 25A are applicable. In my view, the order of remand is justified, no case for interference in the writ jurisdiction of this Court is therefore made out.

4 The Learned Counsel for the Petitioner seeks to rely upon the judgment of a Division Bench of this Court reported in 2000(2) Mh.L.J. 306 in the matter of Shivaji Marotrao Suryawanshi Vs. State of Maharashtra and others. The said case concerned the names in the list of members for elections to a Vividh Karyakari Society and the issue before the Division Bench was whether interference in the list of the members was warranted when the allegation was that the names were illegally included in the voters list, having regard to the fact that the elections were on the anvil. Hence the facts of the said can be said to be

(11) -WP-14225-16.doc.

different than the facts in the instant case, where the question is about the inclusion of the name of the Respondent No.4 as a member of the Respondent No.3 society in place of his deceased father who was the original member. The said judgment would therefore not further the case of the Petitioner. The Writ Petition is accordingly dismissed.

5 However on remand, the Assistant Registrar may consider the application expeditiously.

[R.M.SAVANT, J]