

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2097 OF 2017

Vilasben Bharat Jani & Bharati L Jani & Ors ...Petitioners
Versus
Divisional Joint Registrar, Cooperative Societies, ...Respondents
Mumbai Division, Mumbai & Ors

Mr Altaf Khan, *for the Petitioners.*
Mrs Uma Palsule Desai, *AGP for Respondent No. 1-State.*
Mr M Chaudhari, *for Respondent No. 3.*

CORAM: G.S. PATEL, J
DATED: 30th October 2017

PC:-

1. Rule. By consent returnable forthwith. Learned Advocates for Respondents Nos. 1 and 3 waive service. By consent, taken up for hearing and final disposal.

2. The writ petition is directed against an order dated 31st March 2016 passed by the Divisional Joint Registrar, Cooperative Societies, Mumbai Division, Mumbai. The Divisional Joint Registrar allowed several revision applications (Nos. 264 of 2015, 266 of 2015, 267 of 2015, 268 of 2015, 271 of 2015, 272 of 2015 and 273 of 2015) in favour of the 3rd Respondent-society. A copy of the order of the Divisional Joint Registrar is at page 23 (Exhibit "A").

These revision applications were brought by the 3rd Respondent-society challenging an order of 29th May 2015 passed by the Deputy Registrar, Cooperative Societies, MHADA under Section 23(2) of the Maharashtra Cooperative Societies Act 1960.

3. For the purposes of the present petition, the point of immediate concern is in regard to the Writ Petitioners' application for membership of the 3rd Respondent-society. It seems that the Deputy Registrar allowed that application but in doing so, in the order impugned before the Divisional Joint Registrar, also in the operative portion directed the Writ Petitioners to submit an application for membership of the society. There were other points before the Divisional Joint Registrar, but for the present purposes this is sufficient. Clearly, the Deputy Registrar could not have simultaneously allowed the application for membership and directed that the application for membership be filed. This is what the Divisional Joint Registrar found in his order (pages 30-31).

4. In and of itself there is no reason to interfere with the order simply because the Deputy Registrar's order is clearly erroneous. However, equity demands that the interest of the Writ Petitioners be protected. They cannot be left in this ambiguous situation where, pursuant to the Deputy Registrar's order they have indeed filed a fresh application, but the order allowing the previous application has been set aside. The result is inconsistent. They have been effectively denied membership but yet have a pending application for membership. This is also not a situation that serves the purpose of the 3rd Respondent-society because it finds itself in an equally

uncertain and unstable position in regard to the membership application.

5. The writ petition can be disposed of in the following terms:

- (a) The previous application purportedly allowed by the Deputy Registrar is substituted by the fresh application filed in June 2015. That application is said to have been filed after the Deputy Registrar's order dated 29th May 2015. The society has not yet communicated its decision on that application.
- (b) By way of abandon caution, if that application has not yet been filed by the Writ Petitioners, they will do so within a period of two weeks from today ensuring that the application is complete in all respects.
- (c) The society will consider the application on merits without regard to the previous history of the matter or any of the orders and will communicate its decision within a period of four weeks thereafter.
- (d) If the Society's decision is against the writ Petitioners, no further action will be taken by the society against the Petitioners for a period of three weeks thereafter.
- (e) The writ Petitioners will then be entitled to approach the Deputy Registrar afresh against the adverse

decision if any of the 3rd Respondent-society on the fresh application.

- (f) Should such an application be made before the Deputy Registrar, it will be decided within a period of six weeks from the date of its filing. It will be dealt with on merits uninfluenced by any order passed in this matter.

6. All rival rights and contentions are expressly kept open.

7. The writ petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)