

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO.1760 OF 2017

D.N. Nagar Manas Co-operative Housing Society Ltd.... Petitioner  
Vs.  
State of Maharashtra and others ... Respondents

Mr. Prathamesh Kamat i/b. Mr. Arun Panickar for Petitioner.  
Mr. Manish Upadhye, AGP for Respondents No.1 and 2-State.  
Ms Sayali Apte for Respondent No.3-MHADA.  
Mr. P. P. Kulkarni for Respondent No.4.

**CORAM : R. G. KETKAR, J.**  
**DATE : JULY 05, 2017**

**P.C. :**

Heard Mr. Kamat, learned Counsel for the petitioner, Mr. Upadhye, learned AGP for respondents No.1 and 2-State, Ms Apte, learned Counsel for respondent No.3-MHADA and Mr. Kulkarni, learned Counsel for respondent No.4 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged the judgment and order dated 08.02.2017 passed by the respondent No.3, Deputy Registrar, Co-operative Societies, MHADA, Eastern and Western Suburbs, Mumbai as also the judgment and order dated 16.06.2017 passed by the respondent No.2, Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By order dated 08.02.2017, respondent No.3, in exercise of powers under Section 23(1A) of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'), held that respondent No.4, occupant of flat No.1230, has deemed to have become a member of the petitioner society and directed the petitioner society to make entries in the Statutory Register (I & J) of all the names of purchasers as per the chain mentioned within one month and allot the Secondary Share

Certificate in their name by finally making entries in the name of respondent No.4 as the member of petitioner society. (pages 37 to 45). Aggrieved by this decision, petitioner preferred Revision Application, which was dismissed on 16.06.2017 by the Divisional Joint Registrar.

3. In support of this Petition, Mr. Kamat submitted that respondent No.4 had made application to the petitioner society for enrolling him as a member on 08.08.2014. Respondent No.4 thereafter made application to respondent No.3 under Section 23(1A) on 21.04.2016. This was forwarded by the respondent No.3 to the petitioner society on 28.04.2016. The petitioner communicated its decision on 27.06.2016 to the third respondent enclosing therewith resolution passed by the Special General Meeting convened on 12.06.2016 rejecting the application made by the fourth respondent for membership. He submitted that thus the petitioner has within 60 days from the date of receipt of the application on 28.04.2016 communicated its decision rejecting membership to the fourth respondent. He, therefore, submitted that the authorities below committed serious error in passing the impugned orders.

4. On the other hand, Mr. Kulkarni supported the impugned orders. He submitted that in the present case, society failed to communicate its decision to the fourth respondent within 60 days from the date of receipt of the application by the society and therefore, he has deemed to have become member of the petitioner society.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, as the petitioner did not enroll respondent No.4 as member, as per Section 23(1A), respondent No.4 made application before the Registrar on 21.04.2016. Respondent No.3 in turn forwarded

an application to the petitioner society on 28.04.2016. There is no dispute that the petitioner society received that application on 28.04.2016.

6. Section 23(1A) reads thus,

23. Open Membership

(1A) Where a society refuse to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.”

7. A perusal of Section 23(1A), extracted hereinabove, shows that after receipt of the application, if the society fails to communicate its decision **to the applicant** within 60 days from the receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. In the present case, petitioner has not come with the case that within 60 days from the date of receipt of the application, society has communicated its decision to the fourth respondent.

8. In view thereof as also having regard to the deeming fiction under Section 23(1A) as the petitioner has failed to communicate its decision within 60 days from the date of receipt of the application, respondent No.4 has deemed to have become a member of the society. Hence, no

case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Petition fails and the same is dismissed.

**(R. G. KETKAR, J.)**

*Minal Parab*