

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.731 OF 2017**

**Patidar Sankul Co-operative Housing
Society Ltd.**

**Through its Chairman, Secretary and
Chief Promoters**

: Petitioner.

Versus

The State of Maharashtra

**Through Department of Housing
Mantralaya and ors.**

: Respondents.

Mr. Balkrishna Joshi for the Petitioner.

Mr. Kedar Dighe, AGP for the Respondent Nos. 1 and 1A.

Mr. P G Lad for the Respondent Nos.2 and 3.

**Mr. G S Godbole a/w Mr. Rajendra Jain and Ms. Jyoti Ghag i/by M/s.
Thakore Jariwala & Associates for the Respondent No.4.**

**CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.**

DATE : 09th October 2017

P.C.

1 The above Writ Petition exemplifies the sorry state of affairs in so far as the grant of NOC to the registration of the Petitioner-Society under the Maharashtra Co-operative Societies Act.

2 The principal relief sought in the above Writ Petition is a direction to the authorities under the Maharashtra Co-operative Societies Act, 1960 i.e. the Respondent No.5 to register the Society of the Petitioner as per the proposal and the NOC dated 28/11/2011 issued by the Respondent No.3 to the above Writ Petition. The Petitioner Society comprises of the flat purchasers in the building constructed by the Respondent No.4 Patidar Developers on the

plot of land in question. The plot of land in question was allotted to the Respondent No.4 on lease basis for a period of 30 years on the payment of amount of Rs.3,16,08,393/- as lease premium and Rs.3,16,084/- towards annual lease rent on terms and conditions mentioned in the Agreement to Lease dated 16/10/2003. However, it seems that the lease rent payable is Rs.1,99,324/- per year. The occupation certificate for the building in question was obtained in the year 2009. Thereafter steps to register the Petitioner-Society were taken. It seems that an amount of Rs.16,46,945/- was due from the Respondent No.4 as arrears of lease rent. The Petitioner-Society it seems was informed that unless the said amount of Rs.16,46,945/- towards arrears of lease rent is paid, NOC would not be issued. The Petitioner-Society to pave the way for issuance of the NOC accordingly paid the said amount in the name of the Respondent No.4 as a result of which NOC dated 28/11/2011 for registration of the Society came to be issued to the Petitioner by the Respondent No.3. However, whilst the application of the Petitioner-Society for restoration was pending, the Respondent No.3 herein addressed a letter dated 19/11/2015 to the Respondent No.4 asking the Respondent No.4 to pay an amount of Rs.1,64,82,445/- towards interest on the balance lease premium payable under the Agreement to Lease as also the interest on the delayed payment of the lease rent. It is mentioned in the said letter that only after the payment of the said amount, that further steps would be taken. The said letter in the subject column makes a reference to the letter dated 28/08/2015

addressed by the Petitioner-Society to the Respondent No.3. Hence implicit on the said letter dated 19/11/2015 was the communication of the fact that unless the amount of Rs.1,64,82,445/- is paid, the Respondent No.3 would not consent to the registration of the Petitioner-Society.

3 We have perused the Agreement to Lease dated 16/10/2003. It is an undisputed position that the said plot of land has been given on lease basis to the Respondent No.4 who is therefore obligated to pay the lease premium as also the lease rent thereunder. On the specious ground that the interest on the balance lease premium as also the interest on the arrears of lease rent being not paid by the Respondent No.4, the Respondent No.3 or the Mumbai Board cannot make the Petitioner-Society to wait indefinitely for its registration under the Maharashtra Co-operative Societies Act. As indicated above the obligation to pay the lease premium as well as the lease rent is of the Respondent No.4. The amount therefore mentioned in the said letter dated 19/11/2015 would have to be claimed and recovered from the Respondent No.4 and the same cannot operate as an impediment for not registering the Petitioner-Society. The claim made vide the said letter dated 19/11/2015 would obviously be subject to the objections of the Respondent No.4 in respect of the amount claimed and subject to accounting. In the facts and circumstances as above we therefore direct the Respondent No.5 herein to act upon the NOC dated 28/11/2011 annexed to the above Writ Petition as Exhibit-Q and register the

Petitioner-Society. We further make it clear that the same would be without prejudice to the rights and contentions of the Respondent No.3 to recover the amount from the Respondent No.4. The above Writ Petition is allowed to the aforesaid extent and is disposed of.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]