

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.3060 OF 2016

Om Shree Geetanjali Nagar Co-operative Housing  
Society Limited through its Secretary Nilesh B. Patel ... Petitioner  
Vs.  
State of Maharashtra through Principal Secretary,  
Department of Co-operation, Marketing and Textiles  
and others ... Respondents

Mr. Ram Apte, Senior Advocate a/w. Mr. Datta Mane for Petitioner.  
Mr. Himanshu Takke, AGP for Respondents No.1 to 4-State.  
Mr. Nishant Sashidharan i/b. Mr. B. G. Saraf for Respondent No.5.

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

**P.C. :**

Heard Mr. Apte, learned Senior Counsel for petitioner, Mr. Takke, learned AGP for respondents No.1 to 4 and Mr. Sashidharan, learned Counsel for respondent No.5 at length.

2. By this Petition under Article 226 of the Constitution of India, petitioner, Om Shree Geetanjali Nagar Co-operative Housing Society Limited has challenged the orders dated - (i) 31.12.2013 passed by the respondent No.4, Deputy Registrar, Co-operative Societies, R-North Division, Mumbai; (ii) 15.09.2014 passed by the respondent No.3, Divisional Joint Registrar, Mumbai Division, Mumbai and (iii) 18.04.2016 passed by the respondent No.2, Hon'ble Minister for Co-operation, Marketing and Textiles. By order dated 31.12.2013, respondent No.4, in exercise of powers under Section 18 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act') read with Rule 17 of the Maharashtra Co-operative Societies Rules, 1961 (for short 'Rules'), bifurcated petitioner society into - (i) Om Shree Geetanjali

Nagar A & B Co-operative Housing Society Limited and (ii) Om Shree Geetanjali Nagar C Wing Co-operative Housing Society Limited. Respondent No.4 cancelled society's registration as per Section 21 of the Act. Aggrieved by this decision, Appeal No.22 of 2014 was preferred by Chetan D. Patel and Arvind G. Navre. Appeal No.28 of 2014 was preferred by the present petitioner. During the pendency of the appeal, order of status-quo was passed on 19.05.2014. Appeal was eventually dismissed on 15.09.2014. Petitioner preferred Revision Application before the State Government and by order dated 18.04.2016, respondent No.2 dismissed the Revision Application. It is against these decisions, petitioner has instituted the present Petition.

3. Mr. Shashidharan raised preliminary objection on the ground of maintainability of the Petition at the behest of the petitioner herein. He submitted that the society's registration is cancelled on 31.12.2013. Though the order of status-quo was granted on 19.05.2014, it does not operate as stay to the order dated 31.12.2013. In other words, he submitted that the cancellation of the registration was not revived by the order of the status-quo. He further submitted that during the pendency of the appeal as also revision application, no stay was granted to the order dated 31.12.2013. He, therefore, submitted that as the registration of the society is cancelled, it cannot maintain the Petition. He relied upon the following decisions:

- a. ***RBI "OERS" OPTEES ASSOCIATION Vs. CBDT (BOM), (2006) 286 ITR 241 (Bom);*** and
- b. ***Gorakh Hilal Patil Vs. Parit Samaj Seva Mandal, 2012 (6) Bom.C.R. 619*** to contend that unincorporated Association is not a legal person and as such cannot maintain the Petition.

4. The matter was heard at length on 17.04.2017 and was adjourned so as to enable the learned Counsel for the petitioner to consider impleading members of the society as petitioners. Though the time was taken, petitioner did not implead the members of the society.

5. Mr. Apte submitted that though the registration was cancelled on 31.12.2013, in the appeal preferred by the petitioner society, status-quo order was passed. Even if the order of cancellation of registration was not stayed that will not preclude the petitioner to maintain the Petition. In support of this proposition, he relied upon the decision in ***Ram Kumar Agarwal Vs. Thawar Das*, (1999) 7 SCC 303**, and in particular paragraph 10 thereof.

6. 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, proceeding for bifurcation of the petitioner society was initiated under Section 18 of the Act. By order dated 31.12.2013, petitioner society is bifurcated into two independent societies having different registration numbers. Respondent No.4 also cancelled the registration of the petitioner society as per Section 21 of the Act. Section 21 of the Act reads thus,

**“21. Cancellation of registration.-** The Registrar shall make an order cancelling the registration of a society if it transfers the whole of its assets and liabilities to another society, or amalgamates with another society, or divides itself into two or more societies or if its affairs are wound up, or it is deregistered under the provisions of sub-section ( 1) of section 21A or winding up proceedings in respect of the society are closed or terminated under section 109.

The society shall, from the date of such order of cancellation, be deemed to be dissolved and shall cease to exist as a corporate body.”

7. A perusal of Section 21, extracted hereinabove, shows that the Society, from the date of order of cancellation, is deemed to have been dissolved and shall cease to exist as a corporate body.

8. In the case of **RBI “OERS” OPTEES ASSOCIATION** (*supra*), the learned Single Judge referred to the decision of the Calcutta High Court in ***Sand Carrier's Owner's Union Vs. Board of Trustees for the Port of Calcutta***, AIR 1990 Cal 176 and observed that an unincorporated association is not a legal person and as such Writ Petition is not maintainable. In the case of **Gorakh Hilal Patil** (*supra*), the learned Single Judge of this Court dealt with the contention that the suit property is ownership of Mandal, which is unregistered. It was held that Suit was instituted in the name of Mandal through President and five other plaintiffs who are alleged to be the panchas of Mandal. Mandal was unregistered. No permission of Court was sought to prosecute Suit in the representative capacity. There were around 262 members of the Mandal and they were not joined party to the Suit.

9. Mr. Apte relied upon paragraph 10 of the decision in **Ram Kumar Agarwal** (*supra*), which reads thus,

“10. During the course of hearing, the learned counsel for Thawar Das vehemently resisted the appeals by submitting that the decree under appeal as passed by the High court has been put to execution and sale deed in terms of the decree has been executed and therefore the appeals do not deserve to be allowed. We find no merit in this plea. The judgment of the High Court was pronounced on 21.9.1983. The sale deed in compliance with the judgment of the High Court appears to have been executed on 21.4.1984 through intervention of the court, that is, by taking out execution of the decree. Petition seeking special leave to appeal along with prayer for interim relief was filed in the Supreme Court on 2.1.1984. On 30.9.85 leave to appeal was granted and while directing notices to be issued to the respondents, this Court had also directed execution of the judgment and decree of the High Court to remain stayed if not already executed. Merely because the

decree under appeal has been executed for want of stay order from the superior court the right of the judgment debtor to prosecute the appeal is not lost without there being something to show that the judgment debtor had waived or consciously given up his right of prosecuting the appeal.”

10. In the above decision, the Apex Court held that merely because the decree under appeal has been executed for want of stay order from the superior court, the right of the judgment debtor to prosecute the appeal is not lost without there being something to show that the judgment debtor had waived or consciously given up his right of prosecuting the appeal. In view of the express language of Section 21 of the Act, the petitioner society is deemed to have dissolved and has ceased to exist as a corporate body. In view thereof, the decision in the case of **Ram Kumar Agarwal** (*supra*) is not applicable to the facts of the present case.

11. In the light of the above discussion, Petition is dismissed at the instance of the Petition reserving liberty to the members of the society to adopt appropriate proceedings. Order accordingly.

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

*Minal Parab*