

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.313 OF 2013

Mrs.Cecilia Fernandes	...Petitioner
V/s.	
St.Pius X Co-op. Hsg. Soc. Ltd. & Ors.	...Respondents

Mr.L.H. Pol for the Petitioner.

Mr.Nana D. Yelkar for the Respondent No.1.

Mr.Sudhir Hardikar for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
DATE : 23RD JANUARY, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 15th May, 2012 passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, allowing the revision application filed by the respondent no.2.

2. It is an admitted position that the flat in question belonged to one B.A. Baptist, situated in the respondent no.1 society. The said member had nominated his four daughters viz. (1) Mrs.Judeline Fonseca, (2) Mrs.Cecilia Fernandes, (3) Mrs.Bernadine Abraham and (4) Mrs.Jacqueline Fernandes. Upon the demise of the said Mr.B.A.

Baptist, the respondent no.2 only applied for membership to the respondent no.1 society. Since the respondent no.1 did not give any response to the application, the respondent no.2 applied to the authority for membership. The said application was also rejected. The respondent no.2 thereafter filed the revision application before the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, under section 154 of the Maharashtra Co-operative Societies Act, 1960. The petitioner as well as the other two sisters of the respondent no.2, who were nominated by the original members were not impleaded as parties to the revision application. The said revision application filed by the respondent no.2 came to be allowed by an order dated 15th May, 2012. This order of the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, has been impugned by the petitioner, who was admittedly one of the nominee nominated by the original member.

3. In my view, the revision application could not have been allowed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, in absence of the other nominees who were admittedly nominated by the original member in respect of the said flat and shares which were originally held by the original member.

4. The impugned order dated 15th May, 2012 passed by the

Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, is accordingly set aside.

5. Since there is no dispute that all four sisters were nominated by the deceased father, who was the member of the respondent no.1 society, all of them can apply for transfer of the flat in their name as the nominee under the provisions of the Maharashtra Co-operative Societies Act, 1960 read with Rules.

6. If any such applications are made by all the four nominees, the respondent no.1 society shall consider the same in accordance with law expeditiously. The nominees however are also at liberty to decide mutually as to the membership of the society in respect of the said flat and can convey their mutual agreement to the society.

7. Till such application is made and the same is decided by the respondent no.1 society, the respondent no.1 society shall not permit any of the member to transfer the shares as well as the flat in favour of any third parties.

8. The writ petition is accordingly disposed of in aforesaid terms. No order as to costs. Parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)