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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO.3176 OF 2018
WITH
CIVIL WRIT PETITION NO.3177 OF 2018
WITH
CIVIL WRIT PETITION NO.3178 OF 2018
WITH
CIVIL WRIT PETITION NO.3179 OF 2018
WITH
CIVIL WRIT PETITION NO.3180 OF 2018
WITH
CIVIL WRIT PETITION NO.3181 OF 2018
WITH
CIVIL WRIT PETITION NO.3274 OF 2018
WITH
CIVIL WRIT PETITION NO.3275 OF 2018
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CIVIL WRIT PETITION NO.3276 OF 2018
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CIVIL WRIT PETITION NO.3278 OF 2018
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CIVIL WRIT PETITION NO.3279 OF 2018
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CIVIL WRIT PETITION NO.3280 OF 2018
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CIVIL WRIT PETITION NO.3281 OF 2018
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CIVIL WRIT PETITION NO.3282 OF 2018
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CIVIL WRIT PETITION NO.3283 OF 2018
WITH
CIVIL WRIT PETITION NO.3284 OF 2018
WITH
CIVIL WRIT PETITION NO.3286 OF 2018**

WITH
CIVIL WRIT PETITION NO.3287 OF 2018
WITH
CIVIL WRIT PETITION NO.3288 OF 2018
WITH
CIVIL WRIT PETITION NO.3289 OF 2018
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CIVIL WRIT PETITION NO.3290 OF 2018
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CIVIL WRIT PETITION NO.3291 OF 2018
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CIVIL WRIT PETITION NO.3293 OF 2018
WITH
CIVIL WRIT PETITION NO.3294 OF 2018
WITH
CIVIL WRIT PETITION NO.3295 OF 2018
WITH
CIVIL WRIT PETITION NO.3312 OF 2018
WITH
CIVIL WRIT PETITION NO.3313 OF 2018

Auroville Co-operative Hsg. Soc. Ltd.

...Petitioner

Versus

The Division Joint Registrar Co-operative
Societies and Ors.

...Respondents

Mr.N.N.Bhadrashete, for the Petitioner.

Mr.S.D.Rayarikar, A.G.P for the Respondent Nos.1 and 2.

Mr.Salik Khan, for the Respondent No.3.

CORAM : REVATI MOHITE DERE, J.

DATE : 16th OCTOBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. As the issues involved in all the above Writ Petitions are identical, the above Writ Petitions are being decided by a common order.
3. Learned Counsel for the Petitioner submitted that both the Authorities i.e. the Deputy Registrar, Co-operative Societies, Mumbai, as well as the Divisional Joint Registrar, Co-operative Societies, Mumbai, have not considered the Petitioner's submission in its proper perspective. He submitted that both the authorities had failed to consider that the Development Agreement entered into between the Petitioner-Society and M/s.Saranga Estate Private Limited was cancelled way back in 2009 ; that there was breach of clause – 39 of the Development Agreement dated 15th February, 2004, entered into between the Petitioner – Society and M/s.Saranga Estate Private Limited; and that a Civil Suit filed by the Petitioner -Society is still pending and as such the matter is sub judice.

Learned Counsel for the Petitioner further submits that both the authorities had also failed to consider that there was sufficient cause for refusing membership to the Respondent No.3 in each of the Petitions.

4. Learned Counsel for the Respondent No.3 opposes the Petitions. He submitted that no interference is warranted in the impugned order dated 16th March, 2015, passed by the learned Deputy Registrar, Co-operative Societies, Mumbai, as well as the order dated 24th August, 2017, passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai. He submitted that the jurisdiction, vested with the Registrar under Section 23 of the Maharashtra Co-operative Societies Act, does not extend to determining the validity and/or otherwise of the documents, which are already executed in favour of the concerned person, as the same would lie within the purview of the Civil Court. Learned Counsel relied on the Judgments of this Court in the case of ***Harish Commercial Premises Co-op. Soc. Ltd. v/s Varsha Dinesh Joshi and Ors***,¹ ; ***John D'souza v/s Joint Registrar, Co-operative Societies and Ors***² and ***Usha Jhaveri v/s State of Maharashtra and Others***³, in support of his

1 2006(5) Bom.C.R.853

2 W.P.No.9881 of 2010 decided on 29th June, 2011

3 W.P.No.659 of 2011 decided on 4th July, 2011

submission.

5. Perused the papers including the impugned order 16th March, 2015, passed by the learned Deputy Registrar, Co-operative Societies, Mumbai, as well as the order dated 24th August, 2017, passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai. The Petitioner-Society is a Co-operative Housing Society. The original building of the Petitioner-Society consists of ground plus 10 floors. On 15th February, 2004, the Petitioner-Society executed a Development Agreement with M/s.Saranga Estate Private Limited for constructing an additional new building in a portion of the Petitioner – Society's property. It appears that the new building was constructed in 2009 and the Occupation Certificate was received for the building on 27th November, 2009. It also appears that vide letter dated 25th September, 2009, the Petitioner – Society terminated the Development Agreement entered into between them and M/s.Saranga Estate Private Limited, for breaches as well as for certain acts of omission committed by the Developer. It also appears that the Petitioner – Society filed a Civil Suit with respect to the alleged breaches by the Developer i.e. M/s.Saranga Estate Private Limited of the Development Agreement in this

Court, which is now transferred to the City Civil Court. The Respondent No.3 in each of the aforesaid Petitions had purchased flats in the new building, constructed by M/s.Saranga Estate Private Limited, pursuant to the Development Agreement entered into between the Petitioner – Society and M/s.Saranga Estate Private Limited. On 10th October, 2013, the Respondent No.3 in all the aforesaid petitions applied for membership for being admitted as Members in the Petitioner – Society. Vide letter dated 13th November, 2013, the Petitioner – Society refused to grant membership on the premise, that there was breach of the Development Agreement entered into between the Petitioner – Society and M/s.Saranga Estate Private Limited, in particular clause – 39 of the said Development Agreement; that a Civil Suit has been filed and that the matter is sub judice, inasmuch as, a Civil Suit was pending, with regard to the cancellation of the Agreement. Being aggrieved by the said communication, the Respondent No.3 filed an Appeal before the Deputy Registrar, Co-operative Societies, in May, 2014. The Petitioner – Society filed their reply. After hearing the parties, the Deputy Registrar, Co-operative Societies, vide order dated 16th March, 2015, was pleased to allow the Appeals filed by the Respondent No.3 in each of the Petitions and

the Petitioner – Society was directed to give membership to the Respondent No.3 in each of the aforesaid petitions. Being aggrieved by the said, order, the Petitioner – Society filed 28 Revision Applications. The Divisional Joint Registrar, Co-operative Societies, Mumbai, directed the Petitioner – Society to make the Respondent No.3, (in each of the Petitions), a member of the Petitioner – Society, within 15 days and to issue Share Certificates to them. The Divisional Joint Registrar, Co-operative Societies, Mumbai, vide order dated 24th August, 2017 was pleased to confirm the order passed by the Deputy Registrar, Co-operative Societies, and as such dismissed all the 28 Revision Applications preferred by the Petitioner – Society. Hence these petitions.

6. It is not in dispute that the building was completed in the year 2009 and after receipt of the Occupation Certificate, the Respondent No.3 in each of the aforesaid petitions were put in possession of the said flats, pursuant to the Development Agreement entered into between the Petitioner-Society and M/s.Saranga Estate Private Limited. It is also not in dispute that a Civil Suit has been filed by the Petitioner-Society as against M/s.Saranga Estate Private Limited in this Court, which was

subsequently transferred to the City Civil Court, as the pecuniary jurisdiction of the City Civil Court was enhanced. Admittedly, the Respondent No.3 in each of the petitions, is not a party to the Suit, which is filed by the Petitioner-Society as against M/s.Saranga Estate Private Limited.

7. Learned Counsel for the Petitioner submitted that under Section 23 of the Maharashtra Co-operative Societies Act, no Society without sufficient cause can refuse admission to membership to any person duly qualified therefor under the provisions of Maharashtra Co-operative Societies Act and its bye-laws. According to the learned counsel for the Petitioner, the cancellation of the Development Agreement between the Petitioner – Society and M/s.Saranga Estate Private Limited constituted sufficient cause in terms of Section 23 of the Maharashtra Co-operative Societies Act. He therefore submitted that the Petitioner-Society was well justified in refusing admission to membership to the Respondent No.3, in each of the Petitions.

8. It is pertinent to note that this Court in ***Harish Commercial***

Premises Co-op. Soc. Ltd., (Supra) in paragraph 12 of the said judgment has observed as under:-

“12. In any event I am of the opinion that in the proceedings arising under Section 23 of the Maharashtra Co-operative Society Act what is required to be considered is prima facie whether the respondents who are claiming to be the member are the lawful occupiers and have right, title and interest in the said property on the basis of which he is seeking membership of the society. The jurisdiction of the Registrar under [Section 23](#) does not extend to determine the validity and/or otherwise the documents which are already executed in favour of the concerned person because that is the jurisdiction of the Civil Court and if any person raising any challenge to the said agreement is required to file appropriate civil suit. Prima facie in this case the respondents have got an agreement in their favour and also permission in their favour from the BMC for the purpose of constructing the said property. In that view of the matter I am of the opinion that the contention raised by the petitioner that the respondents are not entitled to be the member because they are unlawful and unauthorised occupier of the said construction cannot be accepted. In that view of the matter, petition fails. The order passed by the Divisional Joint Registrar dated 7.1.2002 is confirmed. However there shall be no order as to costs.”

9. Similarly, in *John D'souza (Supra)*, this Court in paragraph 5 observed, that the authorities under the Maharashtra Co-operative Societies Act, 1960 do not determine and decide the title to the property.

10. As observed earlier, the dispute essentially is between the Developer- M/s.Saranga Estate Private Limited and the Petitioner-Society. The Respondent No.3 in each of the Petitions, has occupied flats in the new building, pursuant to the Development Agreement dated 15th February, 2004 entered into between the Petitioner-Society and M/s.Saranga Estate Private Limited, and are occupying the said flats. The building has also received the required Occupation Certificate. In the suit filed by the Petitioner-Society, the Petitioner-Society is claiming damages for non-performance, by the Developer - M/s.Saranga Estate Private Limited and has alleged that the Developer had failed to fulfill its obligation and as such there is breach of the Agreement.

11. Both the Authorities, i.e. the Deputy Registrar, Co-operative Societies, Mumbai, as well as the Divisional Joint Registrar, Co-operative Societies, Mumbai, have rightly observed that the grounds raised by the

Petitioner-Society that the Development Agreement was cancelled and that the suit is sub judice, cannot be the ground for denying membership to the Respondent No.3, in each of the Petitions. It is evident from both the impugned orders that the authorities have in effect rejected the Petitioner's submission, that they had sufficient cause for refusing membership to the Respondent No.3, in each of the Petitions. As noted in the Judgments relied upon by the Respondent No.3, the jurisdiction of the Registrar under Section 23 of the Maharashtra Co-operative Societies Act, does not extend to determine the validity and/or otherwise of the documents, which are already executed in favour of the concerned person, because that is the jurisdiction of the Civil Court and if any person raising any challenge to any such Agreement, is required to file an appropriate civil suit. What is required to be considered under Section 23 of the Maharashtra Co-operative Societies Act is whether the Respondents who are claiming to be members, are in lawful occupation of the premises, on the basis of which they are claiming membership of the Society. It cannot be disputed, that the Respondent No.3, in each of the Petitions, has occupied the flat/premises, pursuant to a valid Agreement, entered into by each of them with M/s.Saranga Estate Private Limited.

12. Having perused the impugned orders, I am of the opinion that there is no infirmity in the impugned order dated 16th March, 2015, passed by the learned Deputy Registrar, Co-operative Societies, Mumbai, as well as the order dated 24th August, 2017, passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai, warranting interference in writ jurisdiction. Accordingly, the order dated 16th March, 2015, passed by the learned Deputy Registrar, Co-operative Societies, Mumbai, as well as the order dated 24th August, 2017, passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai, stands confirmed.

13. At this stage, learned counsel for the Respondent No.3 states that the Respondent no.3 in each of the Petitions, will re-submit the papers to the Petitioner-Society, within 15 days of the receipt of this order. On re-submitting the papers, the Petitioner-Society shall within 4 weeks thereafter, complete all the necessary formalities and grant membership to the Respondent No.3 in each of the Petitions, as well as issue Share Certificates in favour of the Respondent No.3, in each of the Petitions.

14. The Writ Petitions are accordingly dismissed on the aforesaid terms.

15. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)