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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3501 OF 2014

Narsingh A. Jadhav & Anr.

...Petitioners

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Rajesh Tekale for the Petitioners.

Ms.Sunanda Kumbhat for the Respondent Nos.2 and 3.

Ms.Kavita N. Solunke, A.G.P. for the State – Respondent No.4

Mr.Sunil Jayakar with Ms.Gunjan Jayakar I/b Mr.Miheer Jayakar for the Respondent No.5.

CORAM : R.D. DHANUKA, J.

DATE : 16TH JULY, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 3rd January, 2014 passed by the respondent no.4 thereby allowing the revision application filed by the respondent no.5 society arising out of the order passed by the respondent no.1 granting deemed membership in respect of the respondent no.1 society to the petitioners.

2. The petitioners relied upon an agreement for sale dated 17th September, 1997 entered into between them and M/s.Kalpataru Developers. The said agreement is registered agreement. The said M/s.Kalpataru Developers subsequently abandoned the project. CIDCO thereafter allotted the said plot to the respondent no.5 society.

3. It is the case of the petitioners that on 5th August, 2010, the petitioners applied for membership of the said society by addressing a letter annexed at Exhibit "H" to the petition. On the other hand, it is the case of the respondent no.5 society that the said letter was not received by the respondent no.5 society.

4. The petitioners filed an appeal under section 22 of the Maharashtra Co-operative Societies Act, 1960 before the Joint Registrar *inter-alia* praying for deemed membership. The Joint Registrar passed an order in favour of the petitioners under section 23(2) of the Maharashtra Co-operative Societies act, 1960 for grant of membership. The said order was impugned by the respondent no.5 society before the learned Minister which came to be allowed by an order dated 3rd January, 2014.

5. Learned counsel appearing for the petitioners states that the petitioners had already applied for the membership as far back as on 5th August, 2010 and since the respondent no.5 society did not grant the membership to the petitioners, the learned Minister was justified in allowing the appeal filed by the petitioners under section 23(2) of the Maharashtra Co-operative Societies Act, 1960.

6. It is submitted by the learned counsel appearing for the petitioners that the society has now imposed a condition upon the petitioners for granting membership that the petitioners will have to

pay the market price in respect of the said membership and for allotting the flat constructed in the said society. It is submitted that the respondent no.5 society could not have rejected the application for membership of the petitioners on hypothetical ground that the said application dated 5th August, 2010 was not accompanied with requisite amount and also the documents for seeking membership.

7. Learned counsel for the respondent no.5 society on the other hand invited my attention to the correspondence exchanged between the petitioners and CIDCO and also with the said society. He submits that the alleged application dated 5th August, 2010 was never received by the respondent no.5 society. In his alternate submission, it is submitted that the petitioners had not submitted the application in accordance with the provisions of section 23 of the Maharashtra Co-operative Societies Act, 1960 and also in accordance with Rule 19 of the Maharashtra Co-operative Societies Rule, 1961 and thus the question of refusal of any membership in favour of the petitioners by the respondent no.5 society did not arise. He submits that the appeal filed by the petitioners under section 23(2) itself was thus not maintainable and thus the learned Minister was justified in allowing the revision application filed by the respondent no.5 society.

8. It is submitted by the learned counsel that the petitioners did not make any payment for contribution for construction of the

building after the plot was allotted by CIDCO to the respondent no.5 society nor applied for membership. He submits that the flat in respect of which the membership is sought by the petitioners even does not exist. Learned Minister accordingly considered all these facts in detail and has rightly allowed the revision application filed by the respondent no.5 society.

9. A perusal of the record indicates that only a letter placed on record by the petitioners is dated 5th August, 2010 allegedly requesting the President of the respondent no.5 society for the membership. The respondent no.5 society has disputed the receipt of the said letter. Be that as it may, the petitioners are not able to produce any other record before this Court to indicate that the petitioners had submitted the application for membership along with requisite documents and the amount required to be deposited in accordance with section 23 of the Maharashtra Co-operative Societies Act, 1960 read with Rule 19 of the Maharashtra Co-operative Societies Rules, 1961. In my view, the question of the deemed membership would arise only if the application for membership is in accordance with the conditions prescribed under section 23 of the Maharashtra Co-operative Societies Act, 1960 read with Rule 19 of the Maharashtra Co-operative Societies Rules, 1961. In this case, since the petitioners could not demonstrate even before

this Court that the application was in accordance with those provisions, the question of refusal on the part of the respondent no.5 society of the membership to the petitioners did not arise. In my view, the appeal filed by the petitioners under section 23(2) before the learned Minister thus itself was not maintainable. The order passed by the Joint Registrar granting deemed membership in favour of the petitioners was without jurisdiction.

10. In my view, the learned Minister thus rightly interfered with the said order passed by the learned Joint Registrar in the revision application filed by the respondent no.5 society under section 154 of the Maharashtra Co-operative Societies Act, 1960. The learned Minister has recorded various reasons in the impugned order and the same being not perverse, cannot be interfered with by this Court in this writ petition filed under Article 227 of the Constitution of India.

11. The remedy of the petitioners, if any, would be against the said M/s.Kalpataru Developers arising out of the said agreement alleged to have been entered into between the petitioners and the said M/s.Kalpataru Developers. I am not inclined to interfere with the impugned order passed by the learned Minister. The writ petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)