

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4181 OF 2016

Deonar Industrial Premises Co-operative
Society Ltd.

...Petitioner

Versus

State Of Maharashtra
and others

...Respondents

WITH
Writ Petition NO. 4065 OF 2016
WITH
Writ Petition NO. 4102 OF 2016
WITH
Writ Petition NO. 4104 OF 2016
WITH
Writ Petition NO. 4122 OF 2016
WITH
Writ Petition NO. 4131 OF 2016
WITH
Writ Petition NO. 4132 OF 2016
WITH
Writ Petition NO. 4135 OF 2016
WITH
Writ Petition NO. 4176 OF 2016

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Mr. S.S. Kanetkar, Advocate for the Petitioners.

Mr. S.H. Kankal, A.G.P. for Respondents No.1 to 3-State.

Mr. Mayank Bagla i/b. Prajit S. Manjrekar, Advocate for Respondents
No.4, 6, 7 and 8.

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CORAM : R. G. KETKAR, J.

DATE : 18th DECEMBER, 2018

P.C.

1. Heard Mr.S.S. Kanetkar, learned counsel for the petitioners,
Mr. S.H. Kankal, learned A.G.P. for respondents No.1 to 3-State and

Mr.Mayank Bagla, learned counsel for respondents No.4, 6, 7 & 8, at length.

2. By these Petitions under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the orders dated 26.6.2014 passed by the Deputy Registrar, Co-operative Societies, M-Ward, Mumbai (for short, 'Deputy Registrar') as also the orders dated 8.12.2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai (for short, 'Divisional Joint Registrar') in Revision Applications. By these orders, the Authorities below allowed the appeals preferred by respondent No.4 in each petition under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') and directed the petitioner society in each petition to issue share certificate of the society in favour of the 4th respondent in each petition.

3. As the common questions of law and facts arise in these Petitions, the same can conveniently be disposed of this common order. For appreciating the controversy raised in the Petitions, the facts from Writ Petition No.4065/2016 are taken into consideration. The relevant and material facts, giving rise to filing of the present petition, briefly stated are as under.

4. The petitioner Deonar Industrial Premises Co-operative

Society Ltd. (for short, 'Society') was registered on 23.11.1987 as a 'major class general society' under sub-class (c) 'others' under Rule 10 of the Maharashtra Co-operative Societies Rules, 1961. It is the case of the society that the ownership of the property bearing Survey No.34, Hissa No.1 & 3 and C.T.S. No.339, 339/1, 340, 340/1&2, 341, 343, 343/1, 344, 345, 346 and 346/1 to 7 admeasuring 7057 square meters or thereabout situate at Deonar Village, Taluka-Kurla, Mumbai Suburban District, Mumbai – 400 088 (for short, 'said lands') was acquired by the society on ownership basis on 18.8.1989. Sixteen promoters, including 5th respondent in each petition, were the promoter members. In the year 1995 Vaity family, claiming to be the owners of the said lands, unilaterally cancelled the Conveyance Deed dated 18.8.1989. On 27.3.2001, ten members out of sixteen promoter members entered into transactions with third party, namely, respondent No.4 in each case. It is the case of the society that respondent No.4 is put up by respondents No.7 & 8 each in the petitions as the consideration for acquiring rights by 4th respondent was paid by the seventh respondent Prabhakar Shetty. Respondents No.7 & 8 are the holders of the power of attorney of respondent No.5 in each petition. On the strength of this power of attorney, application was made to the society for transferring shares of respondent No.5 in favour of the 4th respondent. Respondent No.5,

original member, objected for the transfer. Some time in the year 2001, Vaity instituted suit against the society. On 19.8.2002, injunction against the society was granted at the behest of respondent No.6. On 4.10.2002, respondent No.6 executed development agreement with Vaity's. On 16.1.2003, the Bombay City Civil Court vacated the injunction granted in the suit. On 08.7.2003, respondent No.3 executed M.O.U. in favour of respondent No.9. On 19.9.2003, Vaity's unconditionally withdrew the suit. In October, 2013, respondent No.9 obtained I.O.D. for developing the said land.

5. In support of these petitions, Mr. Kanetkar invited my attention to the response dated 2.11.2013 of the society given to the 4th respondent to the application dated 2.9.2013 for membership of the society by transfer of shares held by the 5th respondent. He submitted that the application of membership made by the 4th respondent was considered in the special general meeting convened on 26.10.2013. The application was rejected by unanimous resolution on the grounds more particularly set out in said response (pages 65 to 67). After setting out the grounds (1) to (10) in the communication, it was set out that the transactions are meant to injure the society and its members and hit by Section 23 of the Indian Contract Act, 1872. So there is no question of granting membership which would further prejudice the interest of

the society. Reference was also made to Suit No.2715/2007 and the order passed by this Court restraining Prabhakar Shetty as a Partner of M/s. Anjaneya Estates from alienating, encumbering, transferring or creating third party rights in respect of the suit property. .

6. Mr. Kanetkar submitted that as the application for membership was rejected, respondent No.4 preferred Appeal No.40/2013 before the Deputy Registrar under Section 23(2) of the Act. By order dated 26.6.2014, the Deputy Registrar allowed the appeal. Aggrieved by that decision, the petitioner preferred Revision Application No.465/2014. By order dated 8.12.2015, the Divisional Joint Registrar rejected the Revision Application. It is against these orders, the petitioner society has instituted present petition.

7. Mr. Kanetkar reiterated the grounds set out in the response dated 2.11.2013 for rejecting the application made by the 4th respondent for membership of the society. He also invited my attention to bye-law No.D.1.1(a) which lays down that no person shall be admitted as member unless he has entered into an agreement for the purchase of flat in the building mentioned in the bye-law No.2(a) as per the provisions of Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Ownership Flats Act, 1963 (for short, 'MOFA Act') read with

Rule 5 of the Maharashtra Ownership Flats Rules, 1964 (for short, 'Rules')

8. He also invited my attention to bye-law No.E.1.4(b). Said bye-law lays down that any shares held by a member of the Society may subject to Bye-law E.1.2 be transferred to any other member, provided that no such transfer may take place without the previous sanction of the General Meeting. He submitted that in the present case the General Meeting of the society did not previously sanction the transfer proposed by respondent No.5 in favour of respondent No.4. He submitted that as the authorities below failed to appreciate that the transfer of shares in favour of respondent No.4 will be injurious to the interest of the society, the impugned orders deserve to be set aside. He, therefore, submitted that the petitions require consideration.

9. On the other hand, Mr. Bagla invited my attention to the order dated 26.6.2014 passed by the Deputy Registrar. The Deputy Registrar referred to the decision of this Court in the case of **Usha Arvind Dongre Vs. Suresh Raghunath Kotwal, 1990 Mh.L.J. 306**. In paragraph-11, this Court observed thus :

“11. In the case of a tenant Co-partnership Housing Society the title to the flat remain in the society and not affected by the transfer of shares in the society. Only the right to occupy a flat flows from the ownership of share in such a Co-operative Society. The shares thereby do not

become immovable property. A transfer of such shares does not require registration under section 17(1)(b). Even if the transfer of such shares is considered as a transfer of interest in an immovable property, Section 41 of the Maharashtra Co-operative Societies Act exempt the document effecting transfer of such shares from the ambit of section 17(1)(b) of the Registration Act.”

10. Mr. Bagla, therefore, submitted that the reliance placed on bye-law D-1.1 (a) does not advance the case of the society. Insofar as reliance on bye-law No.E.1.4(b) is concerned, he submitted that the transfer with the previous sanction of the General Meeting of the society is to ensure that the existing member owes no amount to the society. In the present case, respondent No.5, existing member, has cleared all the dues of the society. In any case, respondent No.4 is ready and willing to clear all the dues of the society within a period of four weeks upon demand being raised by the petitioner society. He also relied upon the order dated 29.3.2017 passed by this Court in Writ Petition No.1553/2016 [**Prakash Lachmandas Chhabria & Ors. Vs. Mrs. Renuka Kishan Chandani & Ors.**] and in particular paragraph-5 thereof.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, by response dated 2.11.2013,

the society rejected the application dated 2.9.2013 made by the 4th respondent for membership of the society by transferring the shares held by 5th respondent. The society rejected the application for membership on grounds (1) to (10) enumerated therein. After referring to grounds (1) to (10), it was stated that the transactions are meant to injure the society and its members and thus are hit by Section 23 of the Indian Contract Act, 1872.

12. Aggrieved by this decision, respondent No.4 filed appeal before the Deputy Registrar. The Deputy Registrar considered several judgments cited before him. After considering the material on record, the Deputy Registrar allowed the appeal as indicated earlier. Against that decision, the society preferred Revision Application. The Divisional Joint Registrar exhaustively considered the merits of the case and also the arguments advanced before him. The Divisional Joint Registrar also considered several judgments. The Divisional Joint Registrar referred to the following decisions:

- (1) dated 29.6.2011 passed by this Court in W.P. No.9881/2010 in the case of **John D'Souza Vs. Joint Registrar, Co-operative Societies**, wherein this Court held that the Authorities under the Act cannot undertake the exercise of determining and deciding the title of the property.
- (2) **Harish Commercial Premises Co-operative Society Ltd.**

Vs. Smt. Varsha Dinesh Joshi & Ors., 2006 CTJ 544, wherein this Court held that the Registrar of Co-operative Societies is not empowered to determine the validity of the documents and it is within the domain of the Civil Court. The society can approach the competent civil court for deciding the issue of title.

- (3) dated 4.7.2011 passed by this Court in W.P. 659/2011 in the case of **Usha Jhaveri Vs. State of Maharashtra & Ors.** The Divisional Joint Registrar extracted paragraph-3 of that decision.
- (4) dated 14.6.2011 in W.P. No.1431/2011 in the case of **Nagesh Atmaram Madaye Vs. Deputy Registrar, Co-operative Societies.**

13. After considering several decisions, the Divisional Joint Registrar observed that due to granting membership to the second respondent herein the right, interest or share, if any, of other persons or parties are not extinguished or relinquished. Any dispute to the title of the property can be decided by the Court of competent jurisdiction and adjudication in that behalf will be binding upon the concerned parties. Merely because the membership is granted that does not mean that all rights of the society with subject property automatically came to an end.

14. The Divisional Joint Registrar also observed that the Deputy Registrar has only decided the issue of membership. Considering the reasons recorded in the impugned orders, I do not find that the

authorities below committed any error while passing the impugned orders. The petitioners are not in a position to demonstrate that the findings recorded by the authorities below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The petitioners are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the authorities below. In view thereof, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Hence, the petitions fail and the same are dismissed. It is, however, made clear that if the society deems it appropriate, it can approach the competent Civil Court for establishing its right and said decision will be binding on the parties including respondent No.4. It is made clear that the observations made herein are only for the purpose of testing the validity of the impugned orders and the concerned civil Court will decide the suit uninfluenced by the observations made in the impugned orders and this order. All contentions of the parties in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)