

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

WRIT PETITION NO.4408 OF 2013

M/s.Shreemad Gokul Apartments .. Petitioner
Vs.
Divisional Joint Registrar & Ors. .. Respondents

Mr.Amol B. Kharat i/by M/s.Pillai & Co. for the petitioner.
Mr.S.D.Rayrikar, AGP for the respondent nos.1 & 2-State.
Mr.Bhavin Gada a/w Mr.Kalpesh Mehta and Mr.Vasim A.Shaikh i/by
Mr.Pravin Mehta & Mithi & Co. for the respondent nos.3 & 4.

CORAM : R.D. DHANUKA, J.
DATE : 9th January 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 25th March 2013 passed by the learned Divisional Joint Registrar, Co-op. Societies, Mumbai Division, Mumbai dismissing the revision application dated 18th February 2012 filed by the petitioner challenging the order dated 9th January 2012 passed by the respondent no.2.

2. It is the case of the respondent nos.3 & 4 that they have purchased the 7th floor flat along with terrace in the building known as 'Shreemad Gokul Apartment.' The respondent nos.3 & 4 thereafter applied for membership to the petitioner-Society. The petitioner-Society did not grant membership to the respondent nos.3 & 4 on the ground

that the Society had already filed a complaint before the Consumer Dispute Redressal Forum, Mumbai against the respondent nos. 3 & 4 and challenged the purchase and occupation of the terrace which according to the petitioner, belongs to it.

3. The respondent nos.3 & 4 thereafter filed an application for deemed membership before the Deputy Registrar. The said application came to be allowed by the Deputy Registrar by an order dated 9th January 2013. Being aggrieved by the said order dated 9th January 2012, the petitioner Society filed a revision application before the Divisional Joint Registrar, Mumbai Division. The said Revision Application No.78 of 2012 filed by the petitioner came to be dismissed by the Divisional Joint Registrar. Those two orders are impugned by the petitioner in this petition.

4. Learned counsel appearing for the petitioner submits that terrace in respect of which the membership claimed by the respondent nos.3 & 4 belongs to the petitioner Society and since the respondent nos.3 & 4 were in lawful occupation of the terrace, the petitioner could refuse to grant membership to the respondent nos.3 & 4 in respect of the flat as well as terrace.

5. Learned counsel appearing for the petitioner tenders compilation of judgments in support of this submission. Learned counsel for the petitioner also placed reliance on the judgment of this Court in the case of ***Bandra Owners Court Co-operative Housing Society Ltd., Mumbai Vs. Divisional Joint Registrar of Co-operative Societies, Mumbai & Ors., reported in 2015 (2) Mh.L.J. 463*** and in particular paragraphs 8 to 11 thereof.

6. Learned counsel appearing for the respondent nos.3 & 4, on the other hand, invited my attention to some of the documents annexed to the petition and would submit that the only reasons recorded by the petitioner in the letter dated 12th December 2010 returning the cheque given by the respondent nos.3 & 4 towards membership along with the application on the ground that the petitioner had already made a complaint before the Consumer Dispute Redressal Forum against the respondent nos.3 & 4. He submits that the issue of title which is now sought to be raised by the petitioner before this Court cannot be gone into by the authority. He submits that the petitioner thus could not refuse to grant membership to the respondent nos.3 & 4 on the ground that the complaint was pending before the Consumer Dispute Redressal Forum.

7. In so far as the submission of the learned counsel for the petitioner made across the bar that in view of the respondent nos.3 & 4 seeking membership in respect of terrace also, the membership was refused, it is submitted that the said ground was neither raised in the order of rejection of the membership vide letter dated 12th December 2010 nor can be allowed to be raised across the bar. He submits that even if the respondent nos.3 & 4 had purchased the terrace from the erstwhile owner along with the flat in question, the petitioner could not refuse to grant membership even on the ground that the terrace did not belong to the respondent nos.3 & 4 but belongs to the petitioner Society. It is submitted by the learned counsel that in any event, the said terrace which was purchased by the respondent nos.3 & 4 from the owners was constructed by the developer after utilising the FSI available and thus no issue of title can be raised by the petitioner in respect thereof. In support of this submission, the learned counsel placed reliance on unreported judgment of this Court in the case of ***R.N.A. Classic CHS Ltd. Vs. Deputy Registrar & Ors.*** delivered on 12th March 2014 in Writ Petition No.10847 of 2013 and other companion matters.

8. It is submitted that both the authorities have passed a reasoned order allowing the application filed by the respondent nos.3 & 4

for deemed membership and rejecting the revision application filed by the petitioner respectively and such findings being not perverse, this Court cannot interfere with such findings under Article 227 of the Constitution of India.

9. Learned counsel for the petitioner in rejoinder submits that unreported judgment of this Court in the case of ***R.N.A. Classic CHS Ltd. Vs. Deputy Registrar & Ors. (supra)*** has been dealt with by this Court in the said judgment in the case of ***Bandra Owners Court Co-operative Housing Society Ltd., Mumbai (supra)*** and after adverting to the said judgment, it is held that the Society is not under an obligation to grant membership as a matter of right. The Society has considered the lawful occupation, their rights, title and interest in the property, permissible transfer of shares and/or property and/or interest as per the bye-laws and all related aspects.

10. A perusal of the judgment in the case of ***Bandra Owners Court Co-operative Housing Society Ltd., Mumbai (supra)*** indicates that the judgment of this Court in the case of ***R.N.A. Classic CHS Ltd. Vs. Deputy Registrar & Ors. (supra)*** has not been considered by this Court in the said judgment. Be that as it may, a perusal of the record

indicates that the only ground of rejection of membership of the respondent nos.3 & 4 raised by the petitioner was that the petitioner has already filed a complaint before the Consumer Dispute Redressal Forum.

11. Be that as it may, in my view, the petitioner cannot refuse to grant membership in respect of flat on the ground that the respondent nos.3 & 4 is in illegal occupation of the terrace which is came to be owned by the petitioner Society. There is no findings that the occupation of the members is illegal. Title in respect of terrace has to be determined by appropriate Court in an appropriate proceeding. This Court cannot go into the issue as to whether the petitioner's claim across the bar in respect of the terrace is lawful or not as well as the rival claim made by the respondent nos.3 & 4 in respect thereof.

12. In my view, the unreported judgment of this Court in the case of ***R.N.A. Classic CHS Ltd. Vs.Deputy Registrar & Ors. (supra)*** would squarely apply to the facts of this case. Both the orders passed by the authorities, in my view, are passed in conformity with the principles of law laid down by this Court in the case of ***R.N.A. Classic CHS Ltd. Vs.Deputy Registrar & Ors. (supra)***.

13. In so far as other judgments relied upon by the petitioner on the issue as to whether the terrace belongs to the Society thus need not be gone into in these proceedings and the same can be considered by the appropriate Court in the appropriate proceedings, if any, relating to the title of terrace if filed by Society. In my view, the petition is devoid of merit.

14. I therefore pass the following order :-

- (i) Writ petition is dismissed;
- (ii) It is made clear that this Court has not expressed any views in respect of the title of open terrace attached to the flat on 7th floor of the building in question and the same can be decided in an appropriate proceeding;
- (iii) There shall be no order as to costs;
- (iv) The petitioner is directed to comply with the orders passed by the authorities within a period of four weeks from today.

R.D. DHANUKA, J.