

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6587 OF 2016

Shankar Mahal Co-op. Hsg. Soc. Ltd.	...Petitioner
V/s.	
Yogesh C. Shah & Ors.	...Respondents

WITH
WRIT PETITION NO.6122 OF 2016
WITH
WRIT PETITION NO.7013 OF 2016

Shankar Mahal Co-op. Hsg. Soc. Ltd.	...Petitioner
V/s.	
Bhanu Athaiya & Ors.	...Respondents

WITH
WRIT PETITION NO.7055 OF 2016

Shankar Mahal Co-op. Hsg. Soc. Ltd.	...Petitioner
V/s.	
Pradeep Kothari & Ors.	...Respondents

WITH
WRIT PETITION NO.7056 OF 2016

Shankar Mahal Co-op. Hsg. Soc. Ltd.	...Petitioner
V/s.	
Prakash M. Kothmire & Ors.	...Respondents

Mr.Anilkumar Patil i/b Mr.Sachin R. Pawar for the Petitioner in all the W.Ps.

Mr.Shailesh Shah, Senior Counsel i/b Mr.N.N. Bhadrashete for the Respondent No.1 in W.P. No.6587 of 2016.

Mr.N.N. Bhadrashete for the Respondent No.1 in W.P. Nos.7055 of 2016, 6122 of 2016, 7056 of 2016 and 7013 of 2016.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.2 to 4 in W.P. No.6587 of 2016.

Mr.S.H. Kankal, A.G.P. for the State – Respondent Nos.2 to 4 in W.P. Nos.7055 of 2016, 6122 of 2016, 7056 of 2016 and 7013 of 2016.

CORAM : R.D. DHANUKA, J.
DATE : 1ST AUGUST, 2018.

P.C. :-

1. By these petitions filed under Article 227 of the Constitution of India, the petitioner society has impugned the order passed by the respondent no.3 in the revision application filed by the petitioner society and also the order passed by the Assistant Registrar granting deemed membership to the contesting respondents.

2. Insofar as the Writ Petition No.6587 of 2016 is concerned, it is the case of the petitioner that the respondent no.1 has not produced any document of title in respect of the garage in question in respect of which the application for deemed membership was made under section 22(2) of the Maharashtra Co-operative Societies Act, 1960 (for short the said “MCS Act”) and thus the Joint Registrar could not have granted deemed membership in favour of the respondent no.1. Per contra the case of the respondent no.1 is that the father of the respondent no.1 was already granted membership in respect of the said garage. The father of the respondent no.1 had nominated the respondent no.1 in respect of the said garage. His nomination was duly accepted by the society after the demise of the original member.

The respondent no.1 has been carrying on business in the said garage for last several years. The respondent no.1 applied for membership to the petitioner. The society having refused to make the respondent no.1 as a member, an appeal was filed for membership before the Deputy Registrar. I am therefore, not inclined to accept the submission made by the learned counsel for the petitioner that there was no document of title produced by the respondent no.1 before the Deputy Registrar seeking deemed membership.

3. Insofar as the other four writ petitions are concerned, a perusal of the record indicates that all the respondents who sought membership in respect of the garages have been in possession for last several years and have been carrying on business. The bye-laws of the petitioner society clearly indicated that the owner of the garage is also eligible to apply for the membership of the petitioner society. The respondents are claiming their right through their predecessors-in-title who were the members of the petitioner society from time to time.

4. Insofar as the Writ Petition No.6122 of 2016 is concerned, there was also a litigation between the petitioner and the respondent no.1 before the City Civil Court. The respondent no.1 had produced the document of title in the City Civil Court. The suit filed by the petitioner society was dismissed.

5. In all the four writ petitions, the averments are made by the petitioner that the respondent no.1 or the predecessor-in-title were granted the membership in respect of the said garage.

6. This Court has not expressed any views as to whether any of the garages could be used for carrying on any business by the respondent no.1 or not and the said issue is kept open.

7. The fact remains that though ample opportunities were granted to the petitioner by the Deputy Registrar to file an affidavit in reply to the appeal preferred by the respondent no.1, the petitioner did not file any reply. The authorities below have rendered findings of fact that the applications for the membership filed by the respondent no.1 were in accordance with the format and the bye-laws of the society. These findings of fact are upheld by the Divisional Joint Registrar in the impugned order. The findings of fact being not perverse, cannot be interfered by this Court in these petitions.

8. Insofar as the submission of the petitioner society that the petitioner has passed a resolution that the membership shall not be granted only to the garage owners who are not occupying the flat in the petitioner society is concerned, Mr.Patil, learned counsel appearing for the petitioner could not produce any copy of resolution prior to the date of the respondent no.1 making an application for membership and thus the resolution alleged to have been passed in

the year 2015 which is subsequent in point of time would be of no assistance to the petitioner.

9. All the writ petitions are devoid of merit and are accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)