

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

WRIT PETITION NO. 7047 OF 2017

The Bandra East Ghausia Compound
Co-operative Housing Society Ltd., & Anr. ... Petitioners.

V/s.

The Joint Registrar, Co-operative Societies
(Eastern and Western Suburbs), Slum
Rehabilitation Authority and Anr. ... Respondents.

**WITH
CIVIL APPLICATION NO. 1734 OF 2017
IN
WP NO.7047/2017**

Abbas Khalil Shaikh & Ors. ... Applicants/
Intervenors.

And

The Bandra East Ghausia Compound
Co-operative Housing Society Ltd., & Anr. ... Petitioners.

V/s.

The Joint Registrar, Co-operative Societies
(Eastern and Western Suburbs), Slum
Rehabilitation Authority and Anr. ... Respondents.

Mr. Chaitanya Bhandarkar, Advocate, for the Petitioners in WP.
Mr. V.C. Singh, Advocate I/by Joseph B. Fernandes, Advocate
for the Applicants in CA No. 1734/2017.
Mr. Girish Utangale & Co. for Respondent No. 1.

CORAM : K.K. TATED & N.J. JAMADAR,JJ.

DATE : OCTOBER 23, 2018.

PC :

1 Heard learned counsel for the parties.

2 By this Petition, under Article 226 of the Constitution of India, the Petitioners are challenging the show cause notice dated 17.06.2017 issued by Respondent No. 1-Joint Registrar, Co-operative Societies (Eastern & Western Suburbs), the Authority, under section 78A of the Maharashtra Co-operative Societies Act, 1960. The main contention of petitioners is that in view of proviso under section 78A of the said Act, the Respondent No.1 is not the authority, to issue the said notice. He submits that the petitioners are not getting any financial assistance from the Government in any form. He submits that proviso to section 78A reads thus :

“Provided also that, nothing in this sub-section shall apply to a society, where there is no Government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government;”

3 In support of his contention, he also relies on sections 50 & 62 of the said Act. On the basis of this submission, the learned counsel for the Petitioners submits that

the impugned notice issued by Respondent No. 1 under section 78A of the said Act is required to be set aside.

4 On the other hand, learned counsel Mr. Bhandarkar appearing on behalf of Respondent No. 1 vehemently opposed the present writ petition. He filed affidavit-in-reply dated 12.10.2018 duly affirmed by one Mr. Bajirao Shinde, working as Joint Registrar in Co-operative Department of Slum Rehabilitation Authority. Learned counsel for Respondent No.1 submits that the petitioner is getting financial assistance from them. In support of his contention, he relies on para 4 of the affidavit-in-reply dated 12.10.2018 which reads as under :

“4. I say that under Regulation 33(10) of the DCR, 1991 the Slum dweller held eligible in the slum scheme as per the annexure-II issued by land owning authority i.e. MHADA. In the present case entitled for a residential tenement admeasuring 269 sq.ft. carpets free of cost in the rehab building constructed on the said property. I say that under the parameter of the slum scheme and the guide lines issued for implementation of the slum scheme the developer who is appointed by the slum dweller for implementation of the slum scheme is bound to deposit with the SRA a sum of Rs. 20,000 per tenement to be constructed for the eligible slum dweller in the scheme.

Such amount thereafter deposited by the developer as per circular no. 23 dated 20th October, 1998 has to be kept in a joint fixed deposit with the Nationalize Bank in the name of slum dwellers society and the SRA. The interest accrued thereon is required to be paid to the slum dwellers society for payment of maintenance charges including taxes etc., payable by the members of the said society for using and occupying their respective tenements in the rehab building. As such the petitioners society and its members are beneficiaries of financial assistance in terms of cash as well as kind by way of free tenement from the said Government and therefore, the Respondent No. 1 has rightly issued show cause notice dated 17th June 2017 to the the petitioner under section 78(A) of Maharashtra Co-operative Societies Act, 1960 which is impugned therein.”

He submits that in view of this fact, there is no substance in an objection raised by the Petitioner and in the petition. Therefore, the same is required to be rejected with costs.

5 It is to be noted that, main contention of the Petitioners to challenge the impugned notice under section 78A of the Act, is that they are not getting financial assistance directly or indirectly from the government. Therefore, Respondent No. 1 had no authority to issue notice dated

17.06.2017 in view of the proviso to section 78A, as reproduced herein-above.

6 It is to be noted that Respondent No.1 filed affidavit-in reply and placed on record the benefit that the petitioner is getting from the government directly or indirectly. In view of this fact and for the reasons stated in para- 4 of the affidavit-in-reply filed on behalf of Respondent No.1, the contention raised by the petitioners is not maintainable in law.

7 Hence, petition deserves to be rejected. It is rejected accordingly with no order costs.

8 In view of the dismissal of the writ petition itself, nothing survives in Civil Application No. 1734 of 2017 and the same stands dismissed as infructuous.

(N.J. JAMADAR, J.)

(K. K. TATED,J.)

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