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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5951 OF 2013

Dr. Vasantao Ramchandra Patil

...Petitioner

V/s.

Middle-class Co-operative Housing
Society Limited & Ors

...Respondents

Mr. P.K. Dhakephalkar, Senior Counsel a/w. Ms. Anita Patil i/b. Mr. Sandip Ghogre for the Petitioner.
Ms. Kavita Salunke, AGP for State-Respondent Nos. 2 & 3.
Mr. S.G. Deshmukh i/b. Mr. D.P. Kolekar for Respondent No.1.
Mr. N.D. Shimpi for Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 05TH FEBRUARY, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 03rd May, 2011 passed by the learned Joint Registrar, Co-operative Societies, Kokan Division, Navi Mumbai along with revision application filed by respondent no.1 society under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (for short 'The Said MCS Act').
2. Some of the relevant facts for the purpose of deciding this petition are as under.
3. The respondent no.1 society is the owner of the land

bearing plot no. 62 admeasuring about 1603 yards. The bye-laws of the respondent no.1 society are approved by the Registrar. The respondent no.1 society was formed of the members who were to have their open plots and to have their individual buildings in their respective plots. The Commissioner, Co-operative Societies issued a circular providing a multi-unit construction on the plot suggesting necessary provision to be incorporated for that purpose. Bye-law no.74 was accordingly inserted and was approved by the Assistant Registrar on 1st December, 1998 stating that if any of the members of the respondent no.1 society wanted to construct on his plot, multi-unit building using the available FSI, the society may grant permission to such member to construct multi-unit building and to transfer it to others on the condition that such a new purchaser should register an independent co-operative society and they should be members of the said society. In case, the original plot owner has retained a unit, he should be a member of the new society that would be formed. The new society so formed shall authorise one of its members to exercise the rights of the members on behalf of the said new society who shall exercise such right. All the members of such new society should become nominal members of respondent no.1 society.

4. It is the case of the respondent no.1 that about 33 societies became the members of respondent no.1 society in respect

of their respective plots.

5. Insofar as plot no.62 is concerned, Mr. Keshav Hari Gokhale was a member in respect of the said plot. He agreed to transfer a part of his plot along with the bungalow in favour of the petitioner. Dr. Keshav Hari Gokhale had executed a will on 13th July, 1998 thereby bequeathing his property in favour of his three relatives i.e. Shri Nilkanth Hari Gokhale, Shri Murlidhar Gopal Gokhale and Shri Anant Gopal Gokhale. It was stated in the said will that lease hold rights in respect of plot no.62, including the rights of Dr. Vasantryao Patil i.e. the petitioner herein should be transferred in favour of the new society to be formed of the unit holders and till that time Shri Anant Gopal Gokhale should continue as a nominal member of the respondent no.1 society. It is the case of Dr. Keshav Hari Gokhale that he agreed to be a member of the society to be formed. The respondent no.4 accordingly continued as a nominal member of the respondent no.1 society after the demise of said Dr. Keshav Hari Gokhale. It is the case of the respondent no.1 society that Anjali Plaza Co-operative Housing Society has to now apply to the respondent no.1 society for joining as a member under the said bye-law no.74.

6. The petitioner filed an application on 14th February, 2008 to the respondent no.1 society for associate membership of

respondent no.1. The respondent no.1 rejected the said application on 28th February, 2008. The petitioner filed an appeal before respondent no.3 impugning the decision taken by the society. By an order dated 1st November, 2008, respondent no.3 allowed the said appeal filed by the petitioner and directed respondent no.1 to accept the petitioner as an associate member of the society. The said decision of respondent no.3 was challenged by respondent no.1 by filing a revision application before respondent no.2. Respondent no.2 by an order dated 03rd May, 2011 allowed the revision application filed by respondent no.1 and has set aside the said order dated 01st November, 2008. Being aggrieved by the said order dated 03rd May, 2011, the petitioner has filed this writ petition.

7. Mr. Dhakhephalkar, learned senior counsel for the petitioner invited my attention to various orders passed by the authorities from time to time and would submit that even if, there was no provision in the bye-laws for making a member as an associate member, in view of the provisions of the Maharashtra Co-operative Societies Act, 1960, respondent no.1 could not have refused to make the petitioner as an associate member. He submits that in any event since the petitioner would not have any right of claiming ownership in the plot or in the shares, no prejudice would have been caused to the society, if the petitioner could have been made an associate member.

He did not dispute that, respondent no.4 is a member of the society having 27 shares in respect of the plot no.62.

8. It is submitted that predecessor of respondent no.4 had sold the bungalow along with the land beneath the bungalow admeasuring about 345 sq. mtrs to the petitioner by agreement dated 16th April, 1998. The petitioner was thus entitled to become an associate member though may not be a nominal member of respondent no.1 society.

9. The writ petition is vehemently opposed by respondent no.1 society. The society has filed two affidavits in reply in this petition. Mr. Deshmukh, learned counsel for respondent no.1 society submits that respondent no.4 has already become a member of the respondent no.1 society. The respondent no.1 is the owner of the land. He submits that, the bye-laws of respondent no.1 society duly approved by the Registrar of the Co-operative Society does not contemplate any associate membership. He places reliance on the bye-law no.74 in this regard. He submits that under the said bye-law, respondent no.4 has continued as a nominal member of the respondent no.1 society. The purchasers of various plots of the building constructed on plot no.62 has formed a society i.e. Anjali Plaza Co-operative Housing Society which society has to apply to respondent no.1 for becoming a member. The petitioner could not

have applied to become a associate member. He submits that the Divisional Joint Registrar has considered all this aspects in great detail and has rightly allowed the revision application filed by respondent no.1 society. The society has granted various plots on lease to its members. It is not in dispute that respondent no.1 society did not approve the agreement dated 16th April, 1998 between the original lease holder and the deceased member of the society Dr. Keshav Hari Ghokhale and the petitioner.

10. It is not in dispute that bye-law no.74 does not contemplate or permit an associate membership of the respondent no.1 society. Respondent no.4 has already become a nominal member of respondent no.1 society in respect of the said plot. The society now formed of the members by the occupants of various tenaments of plot no.62 shall have to apply for membership of the respondent no.1 society. The petitioner at the most can claim to one of the member of the said new society, who can apply for nominal membership of the respondent no.1 society. I am not inclined to accept the submissions of learned senior counsel for the petitioner that merely because no right would be conferred upon the petitioner and no prejudice would be caused to respondent no.1, if the petitioner is made an associate member, the application of the petitioner to become associate member ought to have been allowed

by the Revisional Authority.

11. The Revisional Authority has considered this aspect in detail in the impugned order. The findings rendered by the learned Divisional Joint Registrar while allowing the revision application filed by the respondent no.1 society are in confirmity with the bye-laws of respondent no.1 society and also in accordance with law.

12. I do not find any infirmity in the impugned order passed by the Divisional Joint Registrar. The petitioner cannot claim any independent right to become a member of the respondent no.1 society. The writ petition is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)