

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11183 OF 2014

Kanchan F. Mistry

..... Petitioner

VERSUS

Inlks Nagar Co-op.Housing Society & Ors.

..... Respondents

Mr.Farokh K.Mistry for the Petitioner.

Mr.E.R.Naik for the Respondent nos. 4 to 8.

Ms.K.N.Solunke, A.G.P. for the State.

CORAM : R.D. DHANUKA, J.

DATE : 6th JUNE, 2018

P.C.

The petitioner who claims to be the nominee in respect of flat no. D-305, 3rd Floor situated at Inlaks Nagar, Yari Road, Versova, Andheri (West), Mumbai 400 061 situated in respondent no.1 society as per the alleged nomination form submitted by the deceased Mrs.Mausami Madam Ramnani. Both the authorities have rejected the application for membership filed by the petitioner by recording various reasons. A perusal of the impugned order passed by the Divisional Joint Registrar under section 154 of the Maharashtra Co-operative Societies Act, 1960 dated 19th September, 2014 indicates that the revision application of the petitioner is rejected on several grounds including on the ground that the nomination form dated 26th January,2003 filed by the deceased Mrs.Mausami Madam Ramnani during her lifetime was cancelled by her by letter dated 11th February,2006 which was duly received by the respondent no.1 society. In view of this dispute, the Divisional Joint Registrar refused to

interfere with the impugned order passed by the Deputy Registrar under section 23 of the Maharashtra Co-operative Societies Act, 1960.

2. Learned counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***Indrani Wahi vs. Registrar of Co-operative Societies and others, (2016) 6 SCC 440*** in support of his submission that since the nomination form was duly signed by the deceased member in favour of the petitioner and was received by the respondent no.1 society, the society was bound to transfer the membership and the share certificate in favour of the petitioner.

3. In my view, in view of the serious dispute about the fact as to whether the nomination form filed by the original member was withdrawn by her during her lifetime or not and whether such request was received by the society or not, both the authorities were justifying in rejecting the application of the petitioner for membership and for transfer of the flat in her favour.

4. I do not find any infirmity in the impugned order passed by the two authorities below. It is made clear that this court has not expressed any view on the issue as to whether the petitioner would be otherwise entitled to transfer of the flat and the shares based on such documents. The factum of the alleged letter dated 11th February, 2006 from the original member of the society is disputed by the petitioner. This disputed question could not have been gone into by the authorities under the provisions of Maharashtra Co-operative Societies Act, 1960 while dealing with the application under section 23 of the said Act.

5. If any civil suit is filed by the petitioner claiming any right in respect of the said property and the share in respect of the flat in question, civil court can decide the said proceedings without being influenced by the observations made in the impugned orders dated 19th September, 2014 and 18th May, 2010.

6. It is not in dispute that the respondent nos. 4 to 8 who claims to be the relatives of the deceased member have also not filed any proceedings for claiming any rights in respect of the property in question. The respondent no.1 society is accordingly directed not to transfer the said flat and the shares in the name of any party till any appropriate order declaring the ownership of any right, title or interest in respect of the said flat and the shares is obtained from the court having jurisdiction.

7. Since the respondent nos. 4 to 8 also have not produced any record in support of their right, title or interest of whatsoever nature by way of inheritance or otherwise in respect of the flat and shares in question, respondent no.1 society is directed to re-transfer the flat and the shares in the name of the original member.

8. Writ petition is disposed of in the aforesaid terms. No order as to costs.

9. The parties to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]