

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1001 OF 2016

Balmukund Rajaram Biyani	...	Petitioner
Vs.		
Divisional Joint Registrar, Co-operative Societies and others	...	Respondents

Mr. Nitesh Bhutekar for Petitioner.
Mr. S. D. Rayrikar, AGP for Respondents No.1 and 2-State.
Mr. N. N. Bhadrashete for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 21, 2018

P.C. :

Heard Mr. Bhutekar, learned Counsel for the petitioner, Mr. Rayrikar, learned AGP for the respondents No.1 and 2-State and Mr. Bhadrashete, learned Counsel for the respondent No.3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 20.02.2010 passed by the respondent No.2 - Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai as also the judgment and order dated 11.08.2014 passed by the respondent No.1 - Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai. By order dated 20.02.2010, the respondent No.2 allowed the appeal preferred by the third respondent and directed respondent No.4 Society to enroll respondent No.3 as member in respect of flat No.202 situate in plot No.26-27, Saibaba Lane, S.V.Road, Santacruz (West), Mumbai 400 054 (for short 'suit flat'). Aggrieved by that decision, petitioner preferred revision application before the first respondent. Respondent No.1 dismissed the revision application on 11.08.2014. It is against these orders, petitioner has instituted the present Petition.

3. In support of this Petition, Mr. Bhutekar submitted that there was dispute in the family of Biyanis and the said dispute was referred to arbitration. On 22.01.1996, award was made whereunder the suit flat was allotted to the petitioner and Bhagwan R. Biyani jointly. Subsequently, again, dispute arose between family members of Biyani and the dispute was referred to arbitration. On 06.03.2001, award was made. Under that award, though suit flat was allotted to the share of Bhagwan R. Biyani, he was also liable to pay certain amounts to the creditors, more particularly set out in that award. Bhagwan R. Biyani has however, not discharged the liability fixed upon him. He submitted that respondent No.4 Society sought opinion of advocates in respect of transfer of shares of suit flat. On 24.03.2009, opinion was given to the society to the effect that as the transfer was not effected in the Annual General Meeting, the Managing Committee, after knowing the illegalities in the transfer effected, should bring this fact before the General Body so that General Body can decide the issue. In pursuance thereof, after giving opportunity to the third respondent, his membership was cancelled on 24.03.2009. He submitted that basically, the transfer effected in favour of the third respondent, itself, was illegal. The Authorities below were, therefore, not justified in passing the impugned orders.

4. On the other hand, Mr. Bhadrashete supported the impugned orders. He submitted that it is not in dispute that by award dated 06.03.2001, suit flat was allotted to the share of Bhagwan R. Biyani. On 14.05.2007, Bhagwan Biyani executed registered sale deed in favour of the third respondent. In pursuance thereof, respondent No.3 was enrolled as a member sometime in the year 2008. Without following due process of law, his membership was cancelled on 24.03.2009. Respondent No.4, therefore, filed appeal under Section 23 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'). The Authorities below, after

considering the material on record, have directed the fourth respondent to enroll third respondent as member of the society. The Authorities below held that respondent No.4 has complied the requisite procedure for enrolling him as a member, and therefore, no fault can be found with the impugned orders.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and rather is a matter of record that under award dated 06.03.2001, suit flat was allotted to Bhagwan R. Biyani, who in turn, by registered sale deed dated 14.05.2007, sold the suit flat to the respondent No.3. It is also not in dispute that the award dated 06.03.2001 is not challenged. Thus, the petitioner ceased to be joint owner of the suit flat. In view thereof, petitioner has no locus to maintain the proceedings for challenging the impugned orders. That apart, perusal of the impugned orders shows that initially, respondent No.3 was enrolled as a member of the society and share certificate was issued in his favour sometime in the year 2008. Without following procedure of expulsion under Section 35 of the Act, the society cancelled membership of the third respondent. The Authorities below have considered this aspect and concurrently found that the action of the society in cancelling membership of the third respondent was not in accordance with law. For the reasons recorded in the impugned orders, I do not find that the Authorities below committed any error in passing the impugned orders. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)