

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 13788 OF 2018

Ambika Siddhi CHS Ltd. A Co-operative	]	
Housing Society	]	Petitioner
Vs.		
Jatin Chandrakant Shetye and others.	]	Respondents

.....

Mr. A.M. Misal, for Petitioners.
Mr. S.H. Kankal, A.G.P, for Respondents No.2 to 4-State.

.....

CORAM : R.G. KETKAR, J.

DATE : 7TH DECEMBER, 2018.

P.C.

Heard Mr. Misal, learned Counsel for the petitioner and Mr. Kankal, learned A.G.P, for respondents No.2 to 4-State at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner/Society has challenged the orders;

- [1] dated 13th March, 2014 passed by respondent No.2, the Deputy Registrar Co-operative Societies, N-Ward, Konkan Bhavan, C.B.D Belapur, Navi Mumbai in Application No.10 of 2013 (for short 'Deputy Registrar').
- [2] dated 9th September, 2014 passed by respondent No.3, the Divisional Joint Registrar Co-operative Societies, Mumbai Division (for short 'Divisional Joint Registrar') in Revision Application No.179 of 2014.

By order dated 13th March, 2014, the Deputy Registrar allowed the application preferred by respondent No.1 under section 23 (2) of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act') and declared that respondent No.1 has become member of the petitioner-society in respect of Shop No.B-1, with effect from 8th July, 2011. Deputy Registrar directed Managing Committee of the petitioner-society to issue share certificate in favour of respondent No.1 and make entries in 'I' and J form as also other record of the society. By order dated 9th September, 2014, the Divisional Joint Registrar dismissed the revision application. It is against these orders, the petitioner-society has instituted the present Petition.

3. In support of this Petition, Mr. Misal strenuously contended that Articles of Agreement was entered into by and between Chandrakant Vithal Shetye and Vijaykumar Savlaram Khavle on 4th September, 1984. The said agreement is neither registered nor adequately stamped. He further submitted that record of the society was lying with the developer for more than 10 years. Respondent No.1 is son of the developer. Respondent No.1 relied upon alleged Gift Deed dated 31st October, 2010 executed by Vijaykumar Savlaram Khavle in his favour and on the strength of this Gift Deed, he filed application for enrolling him as Member. He submitted that in the record and in particular in Form-I maintained under Rules-32 and 65 (1) of the Maharashtra Co-operative Societies Rules, 1961 (for short 'Rules') and Form-J maintained under Rule-3, shop No.B-1 stands in the joint name of Vijaykumar S. Khavle and Vibhavari Vijaykumar Khavle. Respondent No.1, however, did not obtain no objection of the joint owner Vibhavari Khavle.

4. Mr. Misal submitted that as the agreement of sale executed by and between Chandrakant Vithal Shetye on one hand and Vijaykumar Savalaram Khavle on the other is insufficiently stamped, the Authorities below ought to

have impounded the said document and forwarded to the Collector for paying deficit stamp duty. He relied on the decision of this Court in **R.N.A. Classic CHS Ltd Vs. Deputy Registrar, Co-operative Societies and others in Writ Petition No.10847 of 2013 and Companion Writ Petitions** decided by this Court (Coram: R.M. Savant, J.) on 12th March, 2014 and in particular paragraph 17. In paragraph 17, reference is made to the Circular dated 18th February, 1984 issued by the State Government which enjoins upon the Managing Committee of the Society to ensure that before application is made for transfer of flat, registration fee and stamp duty is paid. It was further observed by this Court that mandate of the Circular was required to be followed by the Authorities below. The Authorities below did not follow the mandate or the Circular. He submitted that object of the Circular is that stamp duty is paid by the parties so that revenue of the Government is protected. He, therefore, submitted that the impugned orders need to be set aside.

5. Mr. Kankal supported the impugned orders. He submitted that the Authorities below have concurrently held that respondent No.1 is entitled to be enrolled as a member. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. The petitioner-society is registered on 4th August, 1986. A perusal of share certificate No.42 issued by the office bearers of the petitioner-society on 15th September, 1986 shows that it is issued in the name of Vijaykumar S. Khavle alone. A perusal of record shows that the Hon'ble Secretary of the petitioner-society addressed a letter dated 15th September, 1986 to Vijaykumar Khavle informing him to preserve the share certificate carefully as it is very important document. Bills for payment of maintenance charges were issued by the

petitioner-society in the name of Vijaykumar Khavle. Vijaykumar Khavle, in turn, executed registered Gift Deed dated 31st October, 2010 in favour of the first respondent.

7. In view thereof, I do not find any merit in the submission of Mr. Misal based on the entries made in Form 'T' and 'J' that respondent No.1 has not obtained no objection from Vibhavari Khavle. Mr. Misal relied on decision of this Court in **R.N.A Classic CHS Ltd** (supra) to contend that the agreement of sale in favour of Vijaykumar Savlaram Khavle dated 4th September, 1984 is not sufficiently stamped. He, however, could not explain the reason as to why the Society enrolled him as a member without insisting payment of deficit stamp duty. That apart, a perusal of paragraph 17 of decision in **R.N.A Classic CHS Ltd** (supra) shows that before the Authorities, objection was specifically raised on behalf of the petitioner-society as regards insufficient stamping. In the present case, no such objection was raised before the Authorities below. In view thereof, I do not find any merit in the submission of Mr. Misal that as the agreement of sale is insufficiently stamped, the Authorities below were not justified in passing the impugned orders.

8. After perusing the material on record and in particular the impugned orders, I do not find that the Authorities below committed any error in passing the impugned orders. In particular, respondent No.3 has considered various judgments while dismissing revision application. In view thereof, no case is made out for interfering with the impugned order. Hence, the Petition fails and the same is dismissed.

[R.G. KETKAR, J.]