

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

WRIT PETITION NO. 1588 OF 2016

Seetabai Mohan Malgaonkar	...Petitioner.
vs.	
The Co-op. Minister and ors.	...Respondents.

Mr. S.V. Bane for the Petitioner.
Ms. K.N.Solunke, AGP. for Respondent Nos.1 and 2.

CORAM : C.V. BHADANG, J.
DATED : 19TH DECEMBER, 2019

PC:

1. Challenge in this petition is to the order dated 30.4.2014 passed by the 2nd respondent, thereby refusing to declare the petitioner as legal heir and nominee of a deceased member of 4th respondent society under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 ("Act" for short).
2. The dispute pertains to Flat No. A-602 in Vasant Bahar Co-op. Housing Society at Kamote, New Mumbai. Now deceased Sharad Malgaonkar was the owner of the said flat and a member of the said society. The petitioner is the mother of deceased Sharad Malgaonkar. Sharad Malgaonkar met with an unnatural death in respect of which his wife was prosecuted and the learned counsel for the petitioner submits that she has been convicted for having intentionally caused the death of her husband i.e. Sharad

Malgaonkar. Admittedly Sharad Malgaonkar has two minor children who are presently staying with the petitioner. In such circumstances, the petitioner filed an application to the society on 22.8.2013 for transfer of the share and for admission to the membership of the society as a legal heir of Sharad Malgaonkar. The society did not decide the application one way or the other. Admittedly, there is no nomination recorded in respect of the said flat. The petitioner approached the second respondent somewhere in November 2013 under Section 22(2) of the Act for declaring her as 'deemed member' of the society. Second respondent by an order dated 30.4.2014 has rejected the application inter alia on the ground that the petitioner has not produced any succession certificate. Feeling aggrieved, the petitioner challenged the same before the first respondent. The first respondent by an order dated 24.9.2015 has dismissed the revision application thereby confirming the order passed by the 2nd respondent. Feeling aggrieved by the said order, the petitioner has filed the present petition.

3. I have heard the learned counsel for the petitioner and the learned counsel for respondent Nos. 1 and 2.

4. Learned counsel for the petitioner has placed reliance on the bye law No.35 of the society in order to submit that the society is required to follow the procedure as set out in the said bye law by

issuing public notice in the local newspaper and inviting objections and thereafter the society is obliged to decide the application for such membership. It is submitted that the petitioner has also submitted indemnity bond along with the application. Learned counsel for the petitioner pointed out that the petitioner is not claiming title to the said flat but is only claiming membership of the society. Reliance is also placed on Section 22(2) of the Act in order to submit that if the society fails to decide the application within the period of three months, the applicant is deemed to have become member of the society. It is submitted that the authorities below, were not justified in insisting on production of succession certificate.

5. The learned counsel for the petitioner has placed reliance on the decision of this court in the case of ***Gondia District Central Co-operative Bank Ltd. vs. State of Maharashtra and ors. Reported in 2009(4) B.C.R. 657(Nagpur Bench)***. *Except these, there are no other contentions raised.*

6. Learned AGP for respondent Nos. 1 and 2 has supported the impugned order. It is submitted that there is no nomination on record in respect of the said flat by deceased Sharad Malgaonkar and therefore, there is nothing wrong in the authorities insisting for

the succession certificate, in as much as, there are legal heirs of the deceased other than the petitioner.

7. I have carefully considered the rival circumstances and the submissions made. As noticed earlier, there is no nomination on record in respect of the said flat. Even assuming that the wife of the deceased would be dis-entitled to be a heir (if found guilty of having intentionally causing death of her husband), still there are minor children of the deceased and they would be the legal heirs other than the petitioner.

8. Section 22(2) of the Act which is relevant for the purpose reads thus:-

“Section 22(2)-Where a person is refused admission as a member of society, the decision (with the reasons thereof) shall be communicated to that person within fifteen days of the date of the decision, or within three months (from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been [admitted] as a member of the society. If any question arises whether a person has become deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.”

9. It can thus be seen that, when a person is refused admission as a member of society, the decision (with the reasons

therefor) are required to be communicated to the person within 15 days or within three months from the date of receipt of the application, whichever is earlier. If the society fails to communicate any decision within three months from the date of receipt of such application, the application is deemed to have been admitted as a member of the society. Later part of sub-section (2) is important which provides that if any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties. It appears that in pursuance of the said provision, the petitioner has approached the Registrar for declaring herself as 'deemed member' of the society. However, the Registrar has refused to accept the same for want of succession certificate. As noticed earlier, admittedly the minor children of deceased member would be the legal heirs apart from the petitioner. At this stage, it is also not possible to decide whether the widow of the deceased member would be dis-entitled to be a heir (on account of having been found guilty of intentionally causing death of her husband), as there is no record produced in that regard. In such circumstances, taking over all view of the matter, no exception can be taken to the order insisting for production of succession certificate. It is necessary to note that, the rights of the petitioner have not been

foreclosed and the petitioner can apply to the authorities again after obtaining succession certificate and if such application is made the same will have to be decided in accordance with law.

10. Reliance placed on the decision of this Court in the case of Gondia District Central Co-op Bank Ltd. (supra) to my mind is misplaced. In that case, this court held that, there is a distinction which has to be made between a person who seeks to become a member and heirs upon whom the property devolves. There cannot be any dispute about the proposition as laid down. The question however in the present case is whether the petitioner is alone the heir of the deceased member.

11. Thus, no case is made out for interference under supervisory jurisdiction under Article 227 of the Constitution of India. Petition is dismissed with no order as to costs.

(C.V. BHADANG, J.)