

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

WRIT PETITION NO.11110 OF 2019

Archit Regency Cooperative

Housing Society Limited

... Petitioner

V/s.

The Deputy Registrar, Cooperative

Societies, Nashik and ors.

... Respondents

Mr.Anilkumar K. Patil for the Petitioner.

Mr.C.D.Mali, AGP for Respondent Nos.1,6 and 7.

Mr.Drupad S. Patil for Respondent Nos.2 and 3.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 15, 2019.

P.C.:-

1. Heard Mr.Anilkumar K. Patil, learned counsel for the petitioner; Mr.C.D. Mali, learned AGP for respondent Nos.1,6 and 7; and Mr.Drupad S. Patil, learned counsel for respondent Nos.2 and 3.

2. Having regard to the challenge made in the writ petition, court is of the view that it may not be necessary to issue formal notice to remaining respondent Nos.4 and

5.

3. By filing this petition under Article 227 of the Constitution of India, petitioner seeks quashing of order dated 31st July, 2017 passed by the Deputy Registrar of Co-operative Societies in appeal and order dated 16th April, 2019 passed by the Joint Registrar of the Co-operative Societies in revision.

4. Matter relates to membership of a society called “Archit Regency Co-operative Housing Society Limited”, which is a co-operative society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (“Co-operative Societies Act” hereinafter). It is stated that the said co-operative society which is the petitioner herein has 15 flats and 11 shops. Dispute centers around Flat Nos.4 and 12 which originally belonged to respondent No.4. Respondent No.4 wanted to sell the said flats to respondent Nos.2 and 3. In this connection, No Objection Certificate was applied for by respondent No.4 from the co-operative society but by

letter dated 23rd January, 2017, such certificate was declined on the ground that the behaviour of respondent No.2 was found not conducive to community living by the members of the co-operative society.

5. Aggrieved by such refusal, respondent No.2 filed an appeal before respondent No.1. By order dated 31st July, 2017, respondent No.1 allowed the said appeal and directed the co-operative society to grant membership to respondent Nos.2 and 3.

6. This was challenged by the co-operative society before the Joint Registrar of Co-operative Societies by filing revision under Section 154 of the Co-operative Societies Act. By the order dated 16th April, 2019, the Revisional Authority i.e. the Divisional Joint Registrar arrayed in this proceeding as respondent No.6 dismissed the revision petition by upholding the order passed by respondent No.1 on 31st July, 2017.

7. Aggrieved, the present petition has been filed.

8. Learned counsel for the petitioner has referred to ground No.7 in the revision application and contends that the same was not considered by the Revisional Authority. Members comprising the General Body of the co-operative society were averse to granting membership to respondent Nos.2 and 3 on the ground of bad behaviour. This aspect of the matter was not considered by both the authorities below. In this connection, he has referred to Section 72 of the Co-operative Societies Act to contend that final authority of every co-operative society is vested in the body of members in General Meeting.

9. On the other hand, learned counsel appearing for respondent Nos.2 and 3 has referred to the provisions of Sections 22 and 23 of the Co-operative Societies Act and contends that the said provisions provide for open membership. Case of respondent Nos. 2 and 3 would be covered by section 22(1)(a). Therefore, the co-operative society could not have declined membership to

respondent Nos.2 and 3. In such circumstances, the Appellate Authority was justified in directing the co-operative society to grant membership to respondent Nos.2 and 3, which order has been upheld by the Revisional Authority.

10. Learned AGP has supported the orders passed by the Revisional Authority as well as by the Appellate Authority.

11. Submissions made by learned counsel for the parties have been considered.

12. At the outset, it would be apposite to advert to the order passed by the Revisional Authority dated 16th April, 2019, relevant portion of which is extracted hereunder:-

“10. On going through entire observations as observed by Deputy Registrar, Cooperative Societies, Nashik, Nashik Taluka, District Nashik it is observed that applicant society has refused membership to respondent No.2 and 3 and hence respondent No.2 and 3 has rightly preferred appeal before respondent No.1 under Section 23(2) of the M.C.S.Act, 1960.

Therefore, Deputy Registrar has rightly dealt with the subject issue and has rightly considered the entire grievances of both parties and passed the impugned order dated 31/07/2017 which in my view appears to be legal and correct. It is further observed that section 23(2) of the M.C.S.Act, 1960 which provides that "Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar. (Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.)"

In the hands of the present case, applicant society has refused the application of respondent No.2 & 3 without considering the documents produced by respondent No.2 & 3.

11. After considering entire rival contentions of both the parties in the present subject revision application matter, I find that Deputy Registrar has rightly considered that respondent Nos.2 & 3 is eligible to become the member of applicant society in view of the citation of aforesaid citation of the Hon'ble High court in the matter of Paramount Cooperative Housing Society v. Seet R. Samant, 2006(2) All Maharashtra Law Journal 40 for becoming the member of the applicant society. Therefore, Deputy Registrar has rightly held that respondent No.2 & 3 is entitled to become the members of applicant society in place of original members of the society. In view of observations made by the Deputy Registrar, Cooperative Societies,

Nashik-Taluka, Nashik, District Nashik, I find that he has rightly passed impugned order dated 31/07/2017 by allowing the appeal of respondent No.2 & 3 by directing the applicant society for enrolling membership to respondent Nos.2 & 3 by accepting entrance fees in terms of the provisions of the M.C.S.Act,1960 read with the provisions of the M.C.S.Rules, 1961.

12. After scrutinizing entire record submitting by both contesting parties, I am satisfied that Deputy Registrar, Cooperative Societies, Nashik-Taluka, Nashik District Nashik has examined the issues as raised by both contending before him in proper perspective in view of legal provisions of law and especially according to the provisions of section 23(2) of the Maharashtra Cooperative Societies Act, 1960.

13. In the light of aforesaid observations, the present revision application deserves to be dismissed without costs. In the result, for the reasons, foregoing, the present revision application fails and it is accordingly dismissed.”

13. Sections 22 and 23 form part of Chapter II of the Co-operative Societies Act dealing with members and their rights and liabilities of such members. Section 22(1) is couched in negative language and is injunctive in nature.

14. In so far the present case is concerned, Section 22(1)(a) would be relevant. It says that subject to Section 24, no person shall be admitted as a member of a co-operative society except in the case of an individual who is competent to contract under the Indian Contract Act, 1872. As per sub-section (1-A) of Section 22, power has been conferred upon the State Government to disqualify a person or a class of persons from being admitted to the membership of a co-operative society or continue as members of such co-operative society, if the State Government forms an opinion that interest of any such person or class of persons conflicts with or is likely to conflict with the objective of the co-operative society. Sub-section (1) of Section 23 provides for open membership. It clearly says that no society shall refuse admission to membership of a person who is otherwise duly qualified, without a sufficient cause. According to Section 24, notwithstanding anything contained in Section 22, a co-operative society may admit any person as a nominal or associate member.

15. Ground taken by the co-operative society that respondent Nos.2 and 3 suffers from bad behaviour, in my opinion, cannot be construed to be a sufficient cause to deny membership of the co-operative society to them. This aspect of the matter was gone into by the Appellate Authority whose decision has been upheld by the Revisional Authority.

16. In the facts and circumstances of the case, this court finds no error or infirmity in the view taken by the Appellate Authority as well as by the Revisional Authority. No case for interference under Article 227 of the Constitution of India is made out.

17. Accordingly, writ petition is dismissed.

(UJJAL BHUYAN, J.)

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