

Ms Neha D. Nagotaneekar for Petitioner.
Mr. Sagar Ambedkar for Respondent No.1.
Mr. P. V. Nelson Rajan, AGP for Respondent Nos.2 to 4-State.

P.C. :

Heard Ms Nagotankar, learned counsel for the petitioner and Mr. Ambedkar, learned counsel for respondent No.1. Also heard Mr. P. V. Nelson Rajan, learned AGP for respondent Nos.2, 3 and 4-State.

2. By filing this Petition under Articles 226 / 227 of the Constitution of India, petitioner seeks quashing of order dated 28.04.2017 passed by the Divisional Joint Registrar of Co-operative Societies, Mumbai Division, Mumbai dismissing Revision Application No.447 of 2016 filed by the petitioner as well as the order dated 19.07.2016 passed by the Assistant Registrar of Co-operative Societies, H/East Ward, Mumbai dismissing the Appeal filed by the petitioner.

3. Short point for consideration is entitlement of respondent No.1 to membership of Kaveri Co-operative Housing Society (co-operative housing society hereinafter). Application dated 15.11.2015 of respondent No.1 to membership of the co-operative housing society was turned down by the co-operative housing society.

3.1. Aggrieved by the same, respondent No.1 preferred appeal before the concerned Assistant Registrar of Co-operative Societies under

Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (Act hereinafter). After hearing the matter, Assistant Registrar passed order dated 19.07.2016 granting membership to respondent No.1 in the co-operative housing society.

3.2. This came to be challenged by the petitioner before the Divisional Joint Registrar of Co-operative Societies, Mumbai Division, Mumbai, respondent No.3 by filing revision application under Section 154 of the Act which was registered as Revision Application No.447 of 2016.

3.3. By the impugned order dated 28.04.2017, revision application was dismissed and the order of the Assistant Registrar dated 19.07.2016 was confirmed.

4. Aggrieved, the present writ petition has been filed.

5. Writ Petition has been filed through the Secretary / Chairman of the co-operative housing society.

6. Learned counsel for the petitioner submits that both the orders passed by the Authorities below are contrary to law inasmuch as there was no proper title document either in favour of the deceased husband of respondent No.1 or herself. Therefore, no finding could have been recorded recording her entitlement to the flat in question i.e. flat No.A/303 which would enable respondent No.1 to have membership of the co-operative housing society.

7. On the other hand, learned counsel for respondent No.1 submits that the Board of Directors of the co-operative housing society has been dissolved and presently a government official has been appointed as an Administrator. Therefore, continuance of the writ petition itself at the instance of Secretary / Chairman has become questionable. That apart, following execution proceedings initiated by respondent No.1, Administrator of the co-operative housing society has passed order on

30.11.2019 admitting respondent No.1 as member of the co-operative housing society. Therefore, the writ petition has become infructuous.

8. Submissions made by learned counsel for the parties have been considered; also perused the materials on record.

9. At the outset, it would be apposite to advert to the impugned order dated 28.04.2017, relevant portion of which is extracted hereunder:

“ I have perused the written submissions of rival parties and the impugned order dated 19/07/2016 of the Assistant Registrar, Co-operative Societies, H/E-Ward, Mumbai.

It appears from the impugned order that the late husband of Respondent No.1 i.e. Mr. J. K. Masalawalla had purchased the subject flat No.A/303 from one Mr. Sunil Desai by entering into the Agreement for Sale dated 26/04/1990. Thereafter, the Applicant society had been registered in the year 1992. Mr. J. K. Masalawalla expired on 01/08/2015. The subject flat seems to be in possession of the Respondent No.1. Accordingly, the Respondent No.1 had filed application for membership to the Applicant society along with all the requisite documents and entrance fees on 15/11/2015. However, the Applicant society had rejected the said application for membership. Therefore, the Respondent No.1 made Appeal before Respondent Assistant Registrar u/s 23(2) of the M.C.S. Act, 1960 on 03/03/2016 for obtaining membership of the Applicant society in respect of subject residential flat. In pursuance to that the Respondent No.2 Assistant Registrar after considering the pleadings and documents of the rival parties vide orders dated 19/07/2016 granted membership to the Respondent No.1 herein in respect of subject flats u/s 23(2) of the M.C.S. Act, 1960.

The Applicant society has filed the aforesaid Revision Applications against the impugned order mainly on grounds that the Respondent No.2 is failed to observe that neither late Mr. J. K. Masalawalla nor his wife herein Respondent No.1 has produced the original copy and certified copy of the registered and duly stamped title documents in respect of suit No.A/303 i.e. Agreement for sale between developer and first purchaser Mr. Desai & Agreement for sale between Mr. Desai and Mr. J. K. Masalawalla.

On the above said grounds it is pertinent to note that the Respondent No.1 had filed police complaint before Bandra police station for lost of original Agreements on 23/01/2016, further, the Respondent No.1 had published notices in two News Papers in respect of loss of original Agreements on 26/01/2016. As per the Applicant society's contentions the Agreement between late Mr. J. K. Masalawalla and Mr. Desai

is not duly stamped and registered. However, it is important to note that the said agreement is not declared as null and void by any competent court of law or anybody had not taken any objection in respect of the said agreement. It appears that the Applicant society had issued maintenance bills in the name of late husband of Respondent No.1.

Further, it is important to note that the late husband of Respondent No.1 i.e. Mr. J. K. Masalawalla had executed registered Will in his lifetime in the name Respondent No.1 dated 05/03/2015 and bequeathed his right, title and interest of the subject flat No.A/303 in favour of the Respondent No.1 herein. The Applicant society had failed to brought to notice that any other person has filed any objection regarding transfer of membership in the name of the Respondent No.1 or any other person has claimed the membership in respect of subject flat.

On the aforesaid ground it is pertinent to note the ratio of the judgment of Harish Commercial Premises Co-operative Society Ltd. V/s. Smt. Varsha Dinesh Joshi & Ors. (2006 CTJ 544) where the Bombay High Court has held that the Registrar of Co-operative Societies is not empowered to determine the validity of documents as it is the jurisdiction of the Civil Court.

Further, the Hon'ble High Court, Bombay by order dated 29/06/2011 in Writ Petition No.9881 of 2010 in the case of John D'souza V/s. State of Maharashtra and Ors. has held that Authorities under M.C.S. Act, 1960 should not undertake the exercise of determining and deciding the title to the property.

Further, Hon'ble High Court at Bombay vide order dated 04/07/2011 in Writ Petition No.659 of 2011 in the case of Usha Jhaveri V/s. State of Maharashtra and Ors. has held at para no.3 that "it is right the Society is not concerned with the dispute between the parties relating to right, title and interest in respect of immovable property. The Society has to recognize somebody so as to collect maintenance and other dues and to ensure that the same is paid regularly. The Society can never adjudicate inter se right and remedies of the parties in that behalf lie elsewhere....".

It is significant to note here that due to granting of membership to the Respondent Nos.1 herein of the Applicant Society, the right, title, interest or share if any of any other persons or parties does not get relinquish or extinguish. The dispute regarding title of the subject property is beyond the purview of the powers conferred by the Authorities under M.C.S. Act, 1960. Ultimately, any dispute to title of property will be decided by Court of competent jurisdiction and the adjudication in that behalf will be binding upon the concerned parties. Though it is considered that the Authorities under M.C.S. Act, 1960 does not have jurisdiction to determine the title of the property so also to decide the validity and legality of the documents / Agreements / Will etc. However, the Registrar

of Co-operative Societies of M.C.S. Act, 1960 is empowered to decide the issue of membership u/s. 22 & 23 of the M.C.S. Act, 1960.

The Section 23 of the M.C.S. Act 1960 is reproduced here:-

Open Membership-

No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its bye-laws.

(1-A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. 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.

(2) 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.

Therefore considering the above inferences, the Applicant has failed to establish his case by valid and substantial grounds. Herein in the instant case the Respondent No.1 herein seems to have complied the provisions of Section 23 for obtaining membership of the Applicant Society. The Respondent No.2 Assistant Registrar after following the due process of law has correctly passed the impugned order u/s 23(2) of the M.C.S. Act, 1960. Thus I do not find any reasons to interfere with the impugned order. Hence, I pass the following order.

O R D E R

1. The Revision Application No.447/2016 is dismissed.
2. The impugned order dated 19/7/2016 passed by the Respondent Assistant Registrar, C.S., H/E-Ward,

Mumbai u/s 23(2) Of the M.C.S. Act, 1960 is hereby confirmed.

3. No order as to cost.”

10. On a careful perusal of the impugned order as extracted above, it is seen that both the Authorities below had taken the view that there was substantial compliance of Section 23 of the Act by respondent No.1 which deals with membership. That apart, view taken by the Appellate Authority as well as by the Revisional Authority, in my opinion, is a reasonable and a pragmatic view; no interference is called for by invoking jurisdiction under Articles 226 / 227 of the Constitution of India, more so, when the petitioner i.e. the co-operative housing society having itself complied with the orders of the Appellate as well as the Revisional Authority by admitting respondent No.1 as its member on 30.11.2019.

11. Consequently, writ petition is dismissed.

(UJJAL BHUYAN, J.)

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