

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

WRIT PETITION NO. 4519 OF 2018

Shree Natwar Co.op. Housing	]	
Soc. Ltd., A Society Registered	]	
under the provisions of the	]	
Maharashtra Co.op. Societies	]	
Act, 1960 Reg. No.BOM/W-C/HSG.	]	
(TC), 359 of 30-01-1992	]	Petitioner
Having its Reg.	]	(Org.
Office at 42, Abdul Rahman	]	Respondent
Street, Mumbai : 400 003.	]	No.1.)

Versus

- | | | | |
|----|---|---|--|
| 1. | Lalmohan Ghosh |] | |
| | |] | |
| 2. | Subarana Lalmohan Ghosh |] | |
| | Both Hindu, Indian |] | |
| | Inhabitant of Mumbai, |] | |
| | Occupants of Room |] | |
| | No.10, 42, Abdul Rahman |] | |
| | Street, Mumbai : 400003. |] | |
| 3. | Assistant Registrar, |] | |
| | Co-operative Societies, |] | |
| | C-Ward, Mumbai |] | |
| | Malhotra House, 6 th Floor, |] | |
| | Mumbai : 400 001. |] | |
| | Present office at Bhoruka |] | |
| | Transport House, 128/B-5 th |] | |
| | Floor, Poona Street, Masjid |] | |
| | Bunder (East), Mumbai 400 009. |] | |
| 4. | Divisional Sub-Registrar |] | |
| | of Co-operative Societies |] | |
| | Mumbai Division, Having |] | |
| | His Office at Malhotra |] | |
| | House, 6 th Floor, Opp. G.P.O. |] | |
| | Fort, Mumbai – 400 001. |] | |

5. State of Maharashtra]
 Sachivalay, Mumbai – 400 021.].. Respondents
]

CORAM : N.J. JAMADAR, J.
DATE : 4TH APRIL 2019

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith and with the consent of the learned counsels for both the parties, heard finally.

2. This petition takes exception to an order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division ('the Divisional Joint Registrar') in Revision Application No.267 of 2014 on 23rd May 2017 whereby the learned Divisional Joint Registrar was persuaded to allow the said revision and quash and set aside the order dated 30th January 2013 passed by the Assistant Registrar, Co-operative Society, C-Ward, Mumbai under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act').

3. The petition arises in the backdrop of the following facts :-

The respondent Nos.1 and 2 herein had preferred an appeal under Section 23(2) of the Act before the Assistant Registrar, Co-operative Societies, against decision of the petitioner-society not to admit them as the members of the society despite the registered conveyance executed in their

favour by the erstwhile member of the society. The learned Assistant Registrar, after considering the resistance put forth by the petitioner-society, rejected the appeal holding, *inter-alia*, that the material on record indicated that in respect of the same premises, i.e., Room No.10, there were documents to show transfer in favour of two persons. Being aggrieved by the aforesaid order, the respondent Nos.1 and 2 herein preferred a revision before the learned Divisional Joint Registrar, Co-operative Societies under Section 154 of the Act. The learned Divisional Joint Registrar, by the impugned order, was pleased to allow the revision application on the premise that the authorities under the Act could not have examined the question of legality and validity of the documents tendered by the parties and the respondent Nos.1 and 2 had fulfilled the necessary conditions for obtaining membership of the petitioner-society. Being aggrieved, the petitioner-society has approached this court by invoking writ jurisdiction.

4. I have heard Shri R.A. Thorat, the learned Senior Counsel for the petitioner, Shri Lalit V. Jain, the learned counsel for respondent No.1 and 2 and Shri P.P. Pujari, the learned AGP for respondent Nos.3, 4 and 5.

5. At the outset, the learned Senior Counsel for the petitioner urged that the impugned order suffers from the vice of fundamental defect of

procedure inasmuch as the learned Divisional Joint Registrar did not provide an effective opportunity of hearing to the petitioner. On this count alone, the impugned order, according to the learned senior counsel, is required to be interfered with, and the matter deserves to be remitted to the authority for a fresh consideration after providing an effective opportunity of hearing to the parties. To bolster up this submission, the learned Senior Counsel invited my attention to the averments in paragraph 7 of the petition. They read as under :-

“8The matter thereafter stands adjourned to June, 2017. The Petitioner states that however it is pertinent to note at this juncture that the order of the Divisional Jt. Registrar is passed in a suspicious circumstances in as much as the matters stood adjourned to 19-6-2017 however at the instance of Respondent No. 1 and 2 was preponed to 11-4-2017, by giving a short notice of 3 days. The matter was not listed on the board of 11-4-2017, however, the same was taken up after 5:30 p.m. the matter was not heard but only a direction to the Petitioner was given to file Written Submission and simultaneously adjourned to for orders. Thus, the Petitioner had neither opportunity to represent in the matter, nor being given an opportunity to be orally heard in the matter. Copy of Board dated 11-04-2017 is annexed herewith and marked EXHIBIT “C” hereto. The photo of the said Board was taken by Hon. Secretary at the time of hearing which shows their matter was not on board on that day and in order it is said that no one from society was present.”

6. The learned counsel for the respondent Nos.1 and 2, on the other hand, stoutly submitted that though the facts that the matter was preponed from 19th June 2017 to 11th April 2017, and that on 11th April 2017, the matter was not listed on the board of the learned Divisional Joint Registrar,

cannot be disputed, yet it becomes evident that the petitioner was very well aware of the matter being taken up by the Divisional Joint Registrar on 11th April 2017. The very contention of the petitioner that the petitioner was directed to file written submission in itself implies that an opportunity was provided to the petitioner. My attention was also invited to that part of the impugned order, wherein the Divisional Joint Registrar has specifically observed that the liberty was granted to file the written arguments within two weeks of the said date, i.e., 11th April 2017. Therefore, according to the learned counsel for respondent Nos.1 and 2, it cannot be now urged that no opportunity of hearing was given to the petitioner. It was further submitted that the Society had no rhyme or reason to deny membership to the respondent Nos.1 and 2 and yet, since the year 2012, the respondent Nos.1 and 2 are made to run from pillar to post for the legitimate membership of the petitioner-society.

7. Without delving into the merits of the matter, from the material on record, it becomes evident that the learned Divisional Joint Registrar did not follow the fundamental principles of judicial disposition in letter and spirit. The matter was admittedly preponed at a short notice. It is indisputable that even on the preponed date, the matter was not listed on board of the learned Divisional Joint Registrar. The matter was, however, allegedly taken up at 5:30 pm. and the petitioner was directed to file

written submissions. It implies that no hearing took place on 11th April 2017. Nor the impugned order records that the matter was heard on 11th April 2017.

8. The aforesaid factor needs to be appreciated in the backdrop of the fact that the order impugned before the learned Divisional Joint Registrar, in revision, was in a sense, passed in favour of the petitioner. An effective opportunity was, therefore, required to be given to the petitioner to urge the points in support of the order passed by the Assistant Registrar. Written submissions may not, in all the cases, provide an efficacious opportunity to put forth the grounds which a party intends to urge.

9. In the aforesaid view of the matter, in my view, it is necessary to remit the matter to the Divisional Joint Registrar, Co-operative Societies, to decide it afresh, after providing an efficacious opportunity of hearing to both the parties within a stipulated time frame. All the questions, on the merits of the matter, shall, however, remain open for consideration.

10. Hence, the petition stands allowed.

The impugned order passed by the learned Divisional Joint Registrar, Co-operative Societies, Mumbai Division on 23rd May 2017 is hereby quashed and set aside.

The learned Divisional Joint Registrar, Co-operative Societies, Mumbai Division shall hear Revision No.2627 of 2014 afresh and decide the same after providing an effective opportunity to the parties therein.

The parties shall appear before the learned Divisional Joint Registrar, Co-operative Societies, on 22nd April 2019, at 3:00 p.m.

The learned Divisional Joint Registrar shall make an endeavour to decide the revision as early as possible and preferably on or before 31st May 2019.

All the contentions of both the parties on the merits of the matter are kept open.

11. Rule is made absolute in the aforesaid terms.

12. Parties to act on an authenticated copy of this order.

[N.J. JAMADAR, J.]