

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10738 OF 2017

The Sopan Baug Co-operative Housing Society Ltd.	]	
A Co-operative housing Society registered under	]	
The provisions of	]	
The Maharashtra Co-op. Housing Society's Act 1960	]	
Bearing Registration No. PNA/HSG/1372/1979.	]	
Having it's registered office at :	]	
1 st floor, Recreation Centre,	]	
The Sopan Baug Co-operative Housing Society Ltd.	]	
Pune - 411 016.	]	
Through it's Secretary,	]	
Mr. Vinay Kochhar,	]	
Age : 49 Years, Occ. : Business,	]	
R/at :- 17/A, Sopan Baug Co-op. Hus. Soc.	]	
Pune – 411 016.	]	... Petitioner

Versus

- | | | | |
|----|---|---|------------------------|
| 1. | Dy. Joint Registrar of Co-operative Society |] | |
| | Pune, Having it's Office at : |] | |
| | Dy. Joint Registrar of Co-operative Society |] | |
| | Pune, Shivaji Nagar, Pune. |] | |
| 2. | Dy. Registrar of Co-operative Society Pune (2)] | | |
| | Having its office at : |] | |
| | Dy. Registrar of Co-operative Society Pune, |] | |
| | Sakahr Sankul, Ground Floor |] | |
| | Shivaji Nagar, Pune. |] | |
| 3. | Mr. Shaukat Musa Shaikh, |] | |
| | Age : Adult, Occ. : Business, |] | |
| | R/at : 683 Shanti Rakshak Society, |] | |
| | Yerwada, Pune – 411 006. |] | ... Respondents |

Mr. Hassnain Kaazi a/w Mr. Raaed Kazi for Petitioner.

Mr. S. D. Rayrikar, AGP for Respondent/State.

Mr. Vaibhav Ugle i/b Mr. Sumant Deshpande for Respondent No.3

CORAM : S. S. SHINDE, J.

RESERVED ON : 24th APRIL 2019
PRONOUNCED ON : 3rd JUNE 2019

JUDGMENT:

. This Writ Petition is filed with following main prayers :

(b) *Be pleased to issue the writ of certiorari and/or any other writ of certiorari to quash and set aside the order dated 23.05.2017 passed by the respondent no.1 in Revision Application No. 182/2015 confirming the order dated 05.03.2015 passed by the respondent no.2 below Application No. 15/2014 partly allowing the application under Section 22(2) of the Mah. Co-op. Society Act, 1960 in favour of the respondent no.3.*

(c) *Be pleased to direct the respondent no.2 not to decide the application dated 12.07.2017 filed by the respondent no.3 seeking direction to issue No Objection Certificate for the construction, drainage and Mojani and to issue deemed "No Objection Certificate" till the decision of this Writ Petition.*

(d) *Be pleased to stay the operation of the impugned order dated 23.05.2017 passed by the respondent no.1 till the decision of this petition.*

2. It appears that during the pendency of this Writ Petition the present petitioner has filed Civil Application No. 1354 of 2018 in the

present Writ Petition, thereby praying to quash and set aside the order dated 31st March 2018 passed by the respondent No. 2 in the application filed by contesting respondent on 13th July 2017 under Section 79(2) of the Maharashtra Cooperative Societies Act 1960. The said civil application is also pending.

3. The relevant facts stated in the petition, in brief are as under :-

The petitioner Society is registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as “the said Act”) vide bearing no. PNA/HSG/1732/1979 and is the owner of the Survey No. 59 Hissa No. 3, 5A, 5B, 5C, 6, 7A, 8 (1+2), 9, 10 and Survey No. 12-A and 12-B situated at village Ghorpadi, Pune 411 001.

4. It is the case of the petitioner that, Mr. Baldev Lulla and Mrs. Indira Lulla (hereinafter referred to as 'original members') were duly admitted as member of the petitioner society as per bye-laws of the petitioner and 05 shares of the petitioner society bearing nos. 311 to 315, were duly allotted to Mrs. Indira Lulla on 2nd May 1979 and Sub-plot No. 31 was also allotted to Mrs. Indira Lulla by the petitioner Society on 15.08.1982 by way of execution of the lease deed. As per the bye-laws the

petitioner allotted single plot to one member only. It is the case of the petitioner that, by an adventure of the lease deed dated 04.06.1982 registered with the Sub-Registrar of Assurance at Haveli vide bearing no. 7817/1986 the petitioner allotted the plot no. 31 admeasuring 795 sq. meters to original members for a term of 99 years at the annual rent of Rs. 1 (One Rupees Only).

5. The original members in accordance with the building plan approved by the Pune Municipal Corporation bearing no. 532 dated 21.12.1983 constructed building comprising the ground and two upper floors on plot no. 31 and obtained completion certificate in respect thereof bearing no. 3756 dated 31.08.1991. That the building constructed by the original members on plot no. 31 is known as “Suraj” which comprises ground and two upper floors, each floor is a separate residential flat and having separate access to the each flat. The total area of plot no. 31 consists of 795 sq. meters. Respondent no.3 allegedly purchased the area 2305.48 sq. feet which is at ground floor of building “Suraj” along with the area 714.06 Sq. feet servant quarters for a sum of Rs. 70,00,000/- (Seventy Lakhs Only) from the Janakalyan Sahakari Bank Ltd, Chembur. The said area is within the area of 795 Sq. meters i.e. within the whole plot no. 31.

As per the then Pune Municipal Corporation's Development Rules, the permission to built the structure on the plot in the said area and buildable FSI ratio was 1:1 and hence, after consideration total construction did by the original members on the said plot, the remaining area does not come to 2305.48 sq. feet, hence the area of 2305.48 sq. feet sold by the Bank to the respondent no.3 is completely erroneous.

6. It is stated that, in the year 1999 one M/s M. Baker Refinishing Pvt. Ltd. had availed a loan of Rs. 4,00,00,000/- (Four Crores Only) from the Janakalyan Sahakari Bank Ltd (hereinafter referred to as 'the said bank') and pursuant to the loan the original members stood personal guarantor on behalf of M/s M. Baker Refinishing Pvt. Ltd. against the said loan. The said loan was defaulted and hence the said bank obtained four recovery certificates all dated 19.01.2006 in case no. 2309 of 2005, 2310 of 2005, 2311 of 2005 and 2312 of 2005 against the said company and its guarantor i.e. original members under Section 101 of the Maharashtra Co-op. Societies Act, 1960 for recovery amount of Rs. 8,22,91,027/- (Eight Crores Twenty Two Lakhs Ninety One Thousand Twenty Seven Only) due as on 29.11.2017 with further interest of 16% till realization of the said amount. The Special Recovery and Sales Officer in execution of the

aforesaid recovery certificate attached the immovable property bearing plot no. 31 'Suraj Apartment', Sopan Baug Co-op Housing Society, Ghorpadi, Pune – 411 001. It is further submitted that original members filed four Writ Petitions bearing nos. 3212 of 2008, 3213 of 2018, 3214 of 2008 and 3215 of 2008 in this Hon'ble Court challenging the Recovery proceedings initiated by the said bank. However, this Hon'ble Court was pleased to dismiss the said four writ petitions and accordingly the physical possession of the said property was taken over by the Special Recovery Officer of the said Bank.

7. It is also stated that, on 13.05.2008, Special Recovery and Sales Officer, Co-op Department, Government of Maharashtra sent a letter to the petitioner on the bank address informing the petitioner that they have taken the possession of the property i.e. ground floor of the building constructed on Plot No.31 - 'Suraj' along with Servant Quarter and Garage, Sopan Baug Co-op Housing Society Limited, Ghorpadi, Pune on 09.05.2008 and also informed that, not to entertain any person or agency to deal with the said property in any manner in whatsoever including tenancy, with prior written consent of the said bank.

8. It is the case of the petitioner that on 26.06.2012 Special Recovery Officer of the said bank issued a Public Notice dated 27.06.2012 in daily Free Press General Pune edition. In which said property i.e. Servant Quarter's, along with adjacent land bearing lying and situated at Suraj Apartment, Sopan Baug Co-op Hous Soc. Ltd, Ghorpadi Pune, were shown and bids were initiated. In the said notice the bids were called before the Recovery Officer on 27.07.2012 at 3.00 p.m. The said Bank has wrongly mentioned the description of the said property as "adjacent land". That the said property is within Plot No. 31 i.e. within 795 sq. meters and not adjacent land to Suraj building. The present respondent no.3 participated in the said auction and succeeded in the bidding pursuant to that on 02.01.2013 the Special Recovery Officer of the Bank executed a Sale Agreement in favour of the respondent no.3 regarding the "Part of the Plot No. 31". On 28.03.2013 the respondent no.3 issued a notice along with the relevant documents to the petitioner too make him as a member of the petitioner within 03 months. But, the petitioner did not reply the said notice, hence, on 17.09.2014 the respondent no.3 filed an application under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 to declared him as a deemed member.

9. On 05.03.2015 the respondent no.2 i.e. Dy. Registrar Co-op. Pune was pleased to allow the application filed by the respondent no.3 under Section 22(2) of the said Act in which the respondent no.2 directed the petitioner to make the respondent no.3 as co-members with Smt. Indira Baldev Lulla i.e. original members of the petitioner society. The petitioner challenged the said order under Section 154 of the Maharashtra Co-operative Societies Act, 1960 by filing the Revision Application No. 182 of 2015 before the respondent no.1. On 23.05.2017 the respondent no.1 rejected the revision application no. 182 of 2015 filed by the petitioner and confirms the order passed by the respondent no.2. On 12.07.2017, the respondent no.3 filed an application with respondent no.1 seeking direction to issue 'no objection certificate' for the construction, drainage and mojani at Plot No. 31, and further sought relief to issue deemed 'no objection certificate'.

10. Being aggrieved by the order dated 23.05.2017 passed by the respondent no.1 whereby confirming the order passed by the respondent no.2 dated 05.03.2015 allowing the application under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 filed by the respondent no.3, the present Writ Petition is filed.

11. The learned counsel appearing for the petitioner submits that, original member is not the owner of plot no.31. The said plot was given to the original member i.e. Smt. Indira Baldev Lulla on the lease for a period of 99 years. The said lease deed executed by and between the petitioner and original members in the office of Sub-Registrar, Haveli No.2 at sr. no. 170 on 24th June 1986. The respondent Authorities completely ignored that the said plot was given on lease basis. Smt. Indira Baldev Lulla neither obtained no objection certificate from the petitioner society nor informed about keeping the said plot of the society as security towards the loan amount with the said bank. The respondent Authorities have ignored the conditions of the said lease deed and more particularly on the condition mentioned in clause (h) of the said lease deed.

12. The learned counsel invites attention of this Court to the said clause from the copy of the lease deed placed on record and submits that, on perusal of said clause, it is abundantly clear that, lessee is not allowed to mortgage or assign leasehold interest in favour of third person in the said plot, without obtaining prior written consent or permission from the society or the State Government.

13. It is submitted that clause (i) of the lease deed makes it clear that, the lessee not to make any assignment or other disposition of the demised premises of building or any part thereof which shall have the affect of vesting the demised premises for the said term or any part thereof in a third party “not previously approved by the Lesser”.

14. It is submitted that, the Authorities failed to understand that the original members have put the said property at stake without the prior permission of the petitioner who are the lawful owner of the said property. Only lease rights are vested with the original members, that too same cannot be alienated without prior permission of the petitioner. The respondent Authorities, completely ignored bye-laws of the petitioner society which is specifically mentioned at page no. 9, clause (xi)(a) which reads as under:-

“(xi)(a) a member shall not be entitled to sale, mortgage, assign or otherwise transfer his interest in the plot of land given to him on lease, excepting with the prior approval of the managing committee of the society. In the event of a member applying for permission to sell or lease out his interest in the plot to any third party, no permission shall be granted by the managing Committee unless such transferee agrees to become and becomes a member of the society and agrees to bound by the laws of the society.”

It is further submitted that it is stated in the clause no. (1)(a) at F.2.8 of the lease agreement that, “each member shall be allotted one plot and the area of each plot shall not normally exceed 500 sq. meters and no plot shall be allotted to a person, if his total holding on such allotment is likely to exceed the Ceiling Limits prescribed under the Urban Land (Ceiling Limits) Act, 1976.”

15. The respondent authorities failed to appreciate that by-laws of the petitioner society did not allow or permit to declare two members for one plot. There is no provision to grant co-membership to another person than original members. However, the respondent no.3 ignoring the provisions of bye-laws has granted co-membership to respondent no.3 with original membership Baldev Lulla and Indira Lulla. It is submitted that when the proceedings were initiated by the Bank under Section 101 of the Maharashtra Co-operative Societies Act 1960 for the recovery of the amount against the original member being guarantor neither 'no objection certificate' was obtained from the petitioner nor any information was given to the petitioner about the loan obtained on the property which belong to the petitioner. It is submitted that the loan was obtained from the said bank by one Bashir Tapia the Director of M/s M. Baker Refinishing Pvt. Ltd.

and original member of the petitioner stood as a guarantor to the loan on plot no. 31. The original member of the society was not the borrower.

16. The learned counsel invites attention of this Court to the grounds taken in the petition, by-laws of the society and all other documents placed on record and submits that petition deserves to be allowed.

17. On the other hand, learned AGP appearing for respondent nos. 1 & 2 relying upon the reasons assigned in the impugned order submits that there are concurrent findings of facts recorded by the Authorities below and those findings are not perverse. Therefore, learned AGP prays for rejection of this petition.

18. Learned counsel appearing for respondent no.3 invites attention of this Court to the findings recorded by respondent no.2 which are confirmed by the respondent no.1. It is submitted that issue of membership was only raised before the respondent no.2. The respondent Authorities are not empowered or/and has no jurisdiction to entertain the contentions of the petitioner about the breach of terms of lease agreement between the original member and Indira Baldev Lulla, and the Authorities have rightly

observed in the impugned order that, if the petitioner has any grievance about the breach of terms of lease agreement, in that case the petitioners can avail of an appropriate remedy. It is submitted that, though the petitioner filed the application to grant him membership. The said application was neither replied nor any decision was taken by the petitioner. Therefore, respondent no.2 invoked the provisions of Section 22(2) of the Maharashtra Co-operative Societies Act, and granted co-membership to the petitioner with original members. The learned counsel appearing for the respondent no.3 in support of his aforesaid contention placed reliance on ratio laid down in the case of *Videocon Appliances Limited Vs. Maker Chambers V. Premises Co-op. Socy. Ltd and Others* reported in (2006) 2 Mah L.J. 388.

19. Heard the learned counsel appearing for the parties at length, with their able assistance perused the pleadings and grounds taken in the petition and annexures thereto, and also reply affidavit filed by the respondent no.3 herein. Respondent no.3 filed the application taking recourse to Section 22(2) of the Maharashtra Co-operative Societies Act. It is stated in the said application that the applicant i.e. respondent no.3 herein has purchased the plot no. 31 in the auction conducted by non-

applicant no.2 in the said application. The said plot has been purchased by respondent no.3, and the Recovery Officer of the said bank has executed the sale deed on 2nd January 2013, in favour of respondent no.3. To register the said sale deed, necessary documents and share amount was also sent by the said applicant i.e. respondent no.3 herein to Jankalyan Sahakari Bank, Chembur, Mumbai. It is further stated in the application that, though three months period stood expired from the date of filing the application by him for membership of petitioners society, no decision was taken on the said application. Therefore, respondent no.3 herein invoked provisions of Section 22(2) of the said Act.

20. The said application was heard and considered by the District Deputy Registrar, Co-operative Societies, Pune City (2), Pune. It appears from the discussion in the order passed by respondent no.2, that the said application was decided after giving an opportunity to petitioner as well as respondent no.3, and thereafter the reasoned order has been passed by respondent no.2. Respondent no.2 after hearing the petitioner as well as respondent no.3 recorded the conclusions that Shri Shaukat Musa Shaikh i.e. respondent no.3 herein, purchased the plot no. 31-Suraj Apartment from the Jankalyan Sahakari Bank Ltd, Chembur, Mumbai in public auction,

and accordingly the Recovery Officer of said bank executed sale deed on 2nd January 2013 in favour of the respondent no.3.

21. It is also recorded by respondent no.2 in the order that, though respondent no.3 applied for membership on 28th March 2013 to petitioner society and said application was accompanied with necessary documents and amount towards share, for three months from filing such application. No reply was given by the petitioner society. Respondent no.3 on 17th September 2014 filed an application taking recourse to Section 22 of the said Act with respondent no.2 Authority for declaring him as a member of the petitioner society.

22. It is also observed by respondent no.2 that, the petitioner has not brought to the notice of respondent no.2 that the public auction conducted by said bank was illegal. It is also observed that, the application for membership filed by respondent no.3 was duly received by the petitioner society. The Authorised Officer of the said bank and also Recovery Officer had written letter to the petitioner society to grant membership to respondent no.3. Respondent no.2 has also observed that there is no resolution passed by the members of the Managing Committee

of petitioner's society to the effect that the plot no. 31 can not be sub-divided in two different plots, and in said plot there can not be co-members. It is observed by respondent no.2 that it was necessary on the part of the Managing Committee of petitioner society to pass such resolution and communicate the said resolution to respondent no.3, that the said plot can not be sub-divided and membership can not be given to some other person in addition to membership of original lessee.

23. It is further observed by respondent no.2 in the impugned order that, the petitioner society has not communicated anything about lease deed, approval map and by-laws of the said society to the applicant i.e. respondent no.3. Respondent no.2 reached to the ultimate conclusion that respondent no.3 has purchased plot no.31 in the Suraj Apartment in public auction undertaken by respondent no.2 by Jankalyan Sahakari Bank Ltd, Chembur, Mumbai and pursuant to purchasing such plot, the Recovery Officer of the said Bank has executed sale deed on 22nd January 2013 in favour of the respondent no.3. Thereafter, respondent no.3 has filed the application to the petitioner society praying therein to grant membership to him. However, said application was not replied by the petitioner society.

24. The aforesaid findings/conclusions reached by respondent no.2 have been confirmed by the respondent no.1 in revision filed by the petitioner. Therefore, there are concurrent findings recorded by the Authorities below. At this stage it would be apt to reproduce herein below Section 22(2) of the said Act which reads as under :-

“S. 22(2). Where a person is refused admission as a member of a society, the decision (with the reasons therefor) 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 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.”

25. Respondent no.2 has concluded that, an application filed by the respondent no.3 for membership with petitioner Society accompanied with necessary documents and also amount towards shares, had been received by the petitioner society. It is also concluded by the said Authorities on facts that, within three months from the receipt of such application the petitioner society did not communicate its decision on said application for membership.

26. Bare perusal of aforesaid provisions would make it abundantly clear that, it is necessary to communicate the decision by the society to the person who applied for membership within three months from the receipt of the application. In the present case respondent no.2 has concluded that, there was no communication within time from the petitioner to respondent no.3 that his request for membership has been turned down. Therefore, entire controversy before respondent no.2 was about claim of respondent no.3 for grant of membership of petitioner society.

27. In the context of controversy in the present case, it would be gainful to make reference to judgment delivered by the bench presided over by learned Single Judge of Bombay High Court, bench at, Nagpur in the case of *Kantilal S/o Dhanrajji Ostwal Vs. Divisional Joint Registrar, Co-operative Societies, Nagpur and Others* reported in **2009 (6) Mh. L.J. 570**. While interpreting and explaining the scope and purport of section 133 and 136(3) of the said Act, learned Single Judge in para 10 held as under :-

“The rights of the petitioner as purchaser at auction sale are protected in view of the provisions of section 136, sub-section (3) of the Maharashtra Co-operative Societies Act,

which lays down that the title of the purchaser shall not be questioned even on the ground that the circumstances required for authorizing the sale had not arisen, or due notice of sale was not given, or power of sale was otherwise an irregular exercise. This provision has been made in order to ensure that people who purchased properties at public auctions do not suffer on account of vicissitudes of fortune of the lis.”

28. Keeping in view aforesaid observation, it may not be open for the petitioner to question the sale deed executed by the said Bank in favour of respondent no.3 in respect of plot no. 31 in the present proceedings, which are arising out of only issue of membership.

29. In that view of the matter and in the light of discussion hereinabove in forgoing paragraphs, this Court is of the opinion that the findings recorded by respondent no.2, and which are confirmed by respondent no.1 to the extent of granting co-membership to the respondent no.3 with Baldev Lulla and Indira Lulla i.e. original members of the society can not be said to be perverse or contrary to the record. Hence, Writ Petition stands rejected.

30. In view of the disposal of the Writ Petition, pending Civil Application no.1354 of 2018 does not survive, hence same is disposed of.

[S.S. SHINDE, J.]