

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9130 OF 2013**

M/s. Vikas Developers

.... Petitioner

V/s

Vikas Valley Sahakari Griha Nirman
Sanstha Mydt. & Others

.....Respondents

Mr. A.Y. Sakhre, Senior Advocate i/b ABDI & Co. for the Petitioner.

None for Respondent Nos. 1 and 2.

Mr. R.P. Kadam, AGP for Respondent Nos. 3 to 5.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 29, 2019

P.C.:-

1] Petitioner-cum-Promoter claims to be the owner of a large piece of land located at Mouje Maval, District Pune, in which Petitioner has carried out plotting, carving out 64 plots. Of the 64 plots, 36 plots were sold by the Petitioner by independent Sale Deeds and 28 plots are retained by the Petitioner wherein it is alleged by the Respondents that the Petitioner is carrying out some hotel business.

2] Respondent No.2, claiming to be the Chief Promoter, applied for registration of the Co-operative Society of the 34 plot holders pursuant

to the provisions of the Maharashtra Co-operative Societies Act, 1960 (For short “MCS Act”). The Assistant Registrar, Co-operative Societies in exercise of powers under Section 9(1) of the MCS Act granted registration to Respondent No. 1- Society at the behest of Respondent No.2 as its Promoter and further categorized the same as Tenant Ownership Co-operative Society as reflected in the registration certificate dated 27/3/2006. issued by the Assistant Registrar, Co-operative Societies. The categorization was ordered pursuant to the provisions of Section 10 and Section 12(1) of the MCS Act and Rules framed thereunder.

3] Petitioner, feeling aggrieved, preferred an appeal under Section 152 of the MCS Act, which came to be allowed vide order dated 25/09/2006 passed by the appellate authority i.e. Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune.

4] Respondent No.1 – Society, feeling aggrieved, preferred revision before the State Government pursuant to the provisions of Section 154 of the MCS Act, which came to be allowed vide impugned order dated 23/08/2013. As such, this Petition.

5] Heard Mr. Sakhre, learned Senior Counsel appearing on behalf of the Petitioner and Mr. Kadam, learned AGP appearing on behalf of Respondent Nos. 3 to 5.

6] Mr. Sakhre, learned Senior Counsel for the Petitioner, would urge that the order passed granting registration in exercise of powers under Section 9(1) is a non-speaking order. As such, order granting registration lacks in reasons for granting such registration. He would further urge that in exercise of appellate powers, appellate authority has re-appreciated the entire gamut of the matter and by a well reasoned order set aside the order of granting registration. He would further urge that revisional authority, while passing the order impugned, thereby restoring the order of granting registration passed by the Assistant Registrar, has exceeded the power of revisional authority, as the revisional authority has re-appreciated the evidence. As such, according to him, the order impugned is liable to be quashed and set aside. He would further urge that non-application of mind by the Assistant Registrar is apparent, as Respondent No.1 – Society is categorized as Tenant Ownership Co-operative Society and in such an

eventuality, there has to be undertaking from the members of the Society that their ownership will vest in the Society, which is conspicuously absent as is claimed. Mr. Sakhre, learned Senior Counsel, would further urge that, of the alleged 34 plot owners, only 27 have signed the application and that being so, application for registration is not signed by more than 60% of the plot owners and as such, registration ought not to have been ordered. In the aforesaid background, he sought quashing of the order impugned, granting registration passed by the Assistant Registrar so also revisional authority.

7] Per contra, learned AGP appearing on behalf of Respondent Nos. 3 to 5 supported the order impugned.

8] With the assistance of respective parties, I have perused the proposal submitted by Respondent No.1 for registration including the object with which the Society is sought to be formed. Of the total 56 plots, 36 plots are sold whereas 20 are held by the Petitioner. Some of the members have purchased more than one plot and as such, out of 36 plots owners, 27 members have signed the application for

registration. All 36 plots owners have completed their construction and though promised, it is claimed that Petitioner has failed to provide maintenance and basic amenities.

9] The documents further reflect that Assistant Registrar was satisfied that as required under Rule 4, Application dated 13/3/2006 for grant of registration was complete in all respect. As such, Assistant Registrar has proceeded to grant registration and accordingly certificate came to be issued on 27/3/2006.

10] Though Mr. Sakhre, learned Senior Counsel for the Petitioner, was right in claiming that categorization was ordered pursuant to the provisions of Section 12 and Rule 10(1) as that of Housing Society and sub-categorization of that of Tenant Ownership Co-operative Housing Society, this Court cannot loose sight of the fact that already appropriate corrigendum is issued by the Assistant Registrar, thereby correcting the categorization from Tenant Ownership Housing Society to ordinary Society (providing services).

11] In the aforesaid background, claim of the Petitioner that there

was incorrect categorization and members were not ready and willing to vest their ownership in the Co-operative Housing Society is contrary to the record and as such, the said contention is liable to be rejected.

12] Apart from above, I have perused the note-sheet which is considered by the Assistant Registrar while granting registration which reflects application of mind by the Assistant Registrar while ordering registration of the Society. Apart from above, while doing so, Assistant Registrar has also struck the balance between the right of the Petitioner to recover the balance consideration and that of the owners to form a Society. Appropriate support can be drawn from the communication dated 27/3/2006 issued by the Assistant Registrar to Yerawada Jail Printing Press, thereby correcting the aforesaid categorization. In the wake of correction of categorization, there is no necessity of vesting of the ownership of the plots into Society as the aim and object of the Society is only to provide services. The appellate authority while setting aside the order of registration has considered certain inherent lacunae in registration proposal, amongst other is the one referred to above.

13] In view of the aforesaid observations, reasons given by the appellate authority for setting aside the order of registration are not at all sustainable and as such, the order of appellate authority is rightly set aside by the revisional authority.

14] The revisional authority, while setting aside the order of appellate authority, has rightly taken into account all the aforesaid facets of the matter such as number of plot owners, number of plots and number of plot owners who have signed the application for registration. The revisional authority has rightly concluded that more than 60% of the members have signed the application for registration, as is required under the MCS Act. Apart from above, the revisional authority has noticed that categorization, as was earlier incorrectly done, has been corrected and a proposal was already sent to the Government Press for issuance of appropriate Notification.

15] In the wake of above, no fault could be noticed with the order impugned passed by the Assistant Registrar, thereby ordering registration of Respondent No.1 – Society and the order passed in revisional jurisdiction under Section 154 of the MCS Act by the State

Government, thereby quashing and setting aside the order passed by the appellate authority, thereby setting aside the registration granted by the Assistant Registrar.

16] As such, this Petition lacks merits and same stands dismissed.

(NITIN W. SAMBRE, J.)