

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

WRIT PETITION NO. 7831 OF 2016

Nilambar Co-operative Hsg. Soc. Ltd., Nashik ... **Petitioner**

V/s.

Deputy Registrar,
Co-operative Societies, Nashik & Ors. ... **Respondents**

Ms.Vrushali Raje i/b. Mr.PN. Joshi for Petitioner.

Ms.M.S. Bane, AGP for Respondent Nos.1 and 5.

Mr.Saeed Akhtar a/w. Mr.Rehan Ansari, Mr.Hitesh Thorat and Ms.Pinny Pathak for Respondent Nos.2 and 3.

CORAM : A.S. GADKARI, J.

DATE : 17th September 2019.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner-society has impugned concurrent finding recorded by both the authorities below constituted under the Maharashtra Co-operative Societies Act, 1960 (for short, “the Said Act”).

2] Heard Ms.Raje, learned counsel for the petitioner-society, Ms.Bane, learned AGP for Respondent Nos.1 & 5 and Mr.Saeed Akhtar, learned counsel for the Respondent Nos.2 & 3. Perused the record annexed to the Petition.

3] The record indicates that, the respondent No.4 sold flat No.2 in the petitioner-society to the respondent Nos.2 and 3 by a registered Sale-Deed dated 29th August 2013. The respondent Nos.2 and 3 thereafter filed an application with the petitioner-society for effecting entry of their names in the share-certificate and transfer of the suit flat in their name with the petitioner-society.

 It appears from the record that, as the petitioner-society did not accept the said application and/or other documents, the respondent Nos.2 and 3 sent the same through post. It is the contention of the petitioner-society that, the society did not receive the said documents and therefore, they did not take any action as per the by-laws in that behalf.

4] In this background, the respondent Nos.2 and 3 filed Appeal No.1 of 2014 before the Deputy Registrar, Co-operative Societies, Nashik, i.e. respondent No.1, under Section 23(2) of the said Act. The respondent No.1 after hearing the parties herein and perusing the record produced before it, has allowed the said appeal on 7th April 2014 and has directed the petitioner-society to carryout necessary change and/or amendment in the share-certificate originally issued in the name of respondent No.4 by incorporating the names of respondent Nos.2 and 3. The respondent No.1

has held that, the respondent Nos.2 and 3 are entitled for joint membership and the names of both of them be incorporated in the share-certificate.

5] Being aggrieved by the said Order dated 7th April 2014 the petitioner-society preferred Revision Application bearing No.R-75 of 2014 under Section 154 of the said Act before the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik, i.e. respondent No.5 herein.

The respondent No.5 after evaluating the evidence available on record and after hearing the parties thereto was pleased to dismiss the said Revision Application by Order dated 24th August 2015 and confirmed the Order passed by the respondent No.1.

6] Learned counsel for the petitioner submitted that, the respondent Nos.2 and 3 did not follow the necessary procedure as prescribed under the by-laws of the society i.e. they did not submit application for transfer of flat along with necessary documents and therefore, the petitioner-society could not process their application. She submitted that, if the respondent Nos.2 and 3 files fresh application, the same will be considered by the petitioner-society as per the provisions of law.

7] Perusal of record would indicate that, as the petitioner-society did not act upon the application received by it for transfer of the said flat in the name of the respondent Nos.2 and 3 after it was sold by the respondent No.4 to them by a registered sale-deed, the respondent Nos.2 and 3 had to prefer the said Appeal No.1 of 2014. The respondent No.1 has allowed the said appeal and has directed the petitioner to change/amend name of original owner i.e. respondent No.4 and incorporate the names of respondent Nos.2 and 3 in her place. It is further directed that, the petitioner-society is entitled to recover necessary transfer charges and enrollment fees from the respondent Nos.2 and 3. A minute perusal of said Order would indicate that, it is an elaborate and well reasoned Order passed as per the provisions of law.

8] As noted earlier, there is concurrent finding recorded by both the authorities below. After perusing the entire record, this Court is of the considered view that, both the authorities below have not committed any error either in law or on facts.

9] The Petition being *dehors* of merits is accordingly rejected.

[A.S. GADKARI, J.]