

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13403 OF 2017

Waves Co-operative Hsg. Soc. Ltd. & Ors.

...Petitioners

Vs.

Mithu Sadarangani & Ors.

...Respondents

Mr. N. N. Bhadrashete, for the Petitioners

Mr. Sachin Pawar, for the respondent No.1

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

1. Heard Ld. Counsels for the parties.
2. Challenge in this petition is to the orders dated 5/7/2017 and 7/10/2017, in terms of which the petitioners who are elected representatives of the Co-Operative Society, have been enjoined in the following terms.

“ ORDER

1. The said application is allowed.
2. The respondents by temporary order are restrained that they or any other person on their behalf, till final disposal of the dispute, should not transfer Opponent No.1 Society's record similarly no new record such as, no permission be given for illegal construction and for encroaching on Society's

common property and if personal interest of the Opponent No.3 to 7 is involved in an issue then they should not take part in that, etc. acts should not be done.

3. *No order as to costs.* ”

3. Mr. Bhadrashete, Ld. Counsel for the petitioners submitted that no such interim reliefs can be issued against such elected representatives. He submits that in any case there is no question of petitioners transferring society records or giving permission for any illegal construction or encroaching upon society's common property. He further submits that the direction in the context of the petitioners not taking part in proceedings where they have personal interest is extremely vague and on the basis of the same, the petitioners are being made to unnecessarily face contempt action. He submits that no injunction in such vague terms have ever been issued against such elected representatives.

4. Mr. Pawar, Ld. Counsel for the respondent No.1 defends the impugned order on the basis of reasoning therein. He points out that there are concurrent findings recorded by the two Courts which warrants no interference whatsoever.

5. As pointed out by Mr. Bhadrashete, the injunction restraining the petitioners from transferring records or granting permission for illegal construction or encroaching upon society's common property, are matters which even in the absence of any injunction the petitioners are not entitled to undertake. Therefore, the injunction to that extent can really cause no prejudice to the petitioners. Such injunction, therefore not interfered with because even otherwise, the petitioners are not entitled to grant permission for illegal construction or encroachment upon society's common property.

6. In so far as the direction that the petitioners should not take part in the proceedings of the Managing Committee if their personal interest is involved are concerned, it is true that such directions are little vague and are capable of interpretations. Even otherwise, under the provisions of the Co-operative Societies Act or Rules or By-laws made thereunder, elected members are not expected to take part in the proceedings where there is clear conflict between their personal interest and their duty to the society. Therefore, there is no necessity of continuing with the injunction on this aspect. The injunction is therefore vacated. However, it is clarified that if in given situation the respondents or for that matter any member of the society feels that the

petitioners have breached principal of acting, even though, there may be conflict between his interest and his duty, is open to the respondents or any such member to take out appropriate proceedings before the appropriate authority in this regard. However, there is no necessity to continue with any blanket injunction in the aforesaid terms.

7. The impugned orders are modified only to the aforesaid extent.

8. With liberty as aforesaid, this petition is disposed of.

9. Ld. Trial Judge is directed to dispose of election petition as expeditiously as possible and in any case on or before 31/3/2020. Ld. Trial Judge shall not be influenced by any observations in the impugned order or for that matter the present order. The election petition should be decided on its own merits and in accordance with the law.

10. The petition is disposed of in aforesaid terms.

11. There shall be no order as to costs.

12. All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)