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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.925 OF 2011

Ms.Varashree Narayan,)
owner of Garage No.56(II), situate at)
Dariya Mahal, Basement Garages)
80, L. Jagmohandas Marg, Malbar Hill,)
Mumbai – 400 006 and residing at 21,)
Guide, 6th Floor, 16, L.D. Ruparel Marg,)
Malbar Hill, Mumbai – 400 006.) ...Petitioner

....Versus....

1). Sagar Tear Co-operative Housing)
Society Limited, Dariya Mahal, "A")
80, L. Jagmohandas Marg,)
Mumbai – 400 006.)
2). Divisional Joint Registrar,)
Co-operative Societies, Mumbai)
Malhotra House, 6th Floor, Opposite)
G.P.O. Mumbai – 400 001.) ...Respondents

Ms.Varashree Narayan – Petitioner in person.

Mr.Vivek Kantawala with Mr.Amey Patil, Mr.Vivek Sharma and
Ms.Hetal Jobanputra I/b M/s.Vivek Kantawala & Co. for the
Respondent No.1.

Mr.Kedar Dighe, Assistant Government Pleader for the Respondent
No.2.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 28TH JUNE, 2019
PRONOUNCED ON : 5TH JULY, 2019

JUDGMENT :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 5th April, 2011 passed by the Divisional Joint Registrar confirming the order dated 22nd July, 2005 passed by the learned Deputy Registrar rejecting the application filed by the petitioner for deemed membership under section 22(2) of the Maharashtra Co-operative Societies Act, 1960 (for short "MCS Act"). Some of the relevant facts for the purpose of deciding this petition are as under :

2. It is the case of the petitioner that by an agreement for sale dated 8th October, 1991 between Mohansingh Nainwal and the petitioner herein, the petitioner purchased a garage bearing no.56(II) admeasuring 200 sq. ft. in the basement of Dariya Mahal No.2, 80 Napeansea Road, Bombay – 400 006 on the terms and conditions recorded in the said agreement for sale. The said agreement was registered on 8th October, 1991. It is the case of the petitioner that Mr.Maliram Mittal constructed a residential building of the respondent no.1 and also constructed 110 garages including the said garage which was purchased by the petitioner on plots of land bearing plot bearing C.S. Nos.940 and 941.

3. It is the case of the petitioner that on 19th July, 1993, the petitioner made an application to the Secretary of Sagar Tear Co-operative Housing Society Limited, Dariya Mahal "A", Bombay for

membership of the said society. The petitioner also enclosed a cheque for Rs.260/- in favour of the said society towards the share amount and entrance fee. It is the case of the petitioner that since the respondent no.1 failed to consider the application of the petitioner for membership, the petitioner filed an application / appeal before the Deputy Registrar under section 23(2) of the MCS Act.

4. By an order dated 21st September, 2002, the Deputy Registrar dismissed the said Application No.10 of 2002 filed by the petitioner. The petitioner thereafter filed a revision application under section 154 of the MCS Act before the Divisional Joint Registrar, Co-operative Societies. By an order dated 13th January, 2005, the Divisional Joint Registrar rejected the said Revision Application No.26 of 2003 filed by the petitioner. The petitioner challenged the said order dated 13th January, 2005 by filing a Writ Petition (913 of 2005) in this Court.

5. By an order dated 11th April, 2005 passed by this Court, this Court disposed of the said writ petition by consent of the petitioner and the respondent no.1. This Court quashed the order of the Deputy Registrar, Co-operative Societies dated 21st September, 2002 and the order of the Divisional Joint Registrar dated 13th January, 2005 without expressing any opinion on the merits of the rival contentions of the parties. This Court remanded the matter back

to the Deputy Registrar, Co-operative Societies D-Ward, Mumbai and directed the petitioner to appear before the Deputy Registrar for directions on 25th April, 2005. This Court granted an opportunity to the parties to file such documents as they desire in respect of their respective cases before the Deputy Registrar. This Court directed the Deputy Registrar to pass a fresh order on the application of the petitioner for membership within a period of three months.

6. On 22nd July, 2005, the Deputy Registrar after hearing the parties dismissed the application filed by the petitioner under section 23(2) of the MCS Act. The petitioner filed a revision application before the respondent no.2 bearing No.438 of 2005. By an order dated 5th April, 2011, the learned Divisional Joint Registrar dismissed the said revision application filed by the petitioner. The petitioner filed this writ petition *inter-alia* impugning the said order dated 5th April, 2011 passed by the respondent no.2 and also the order dated 22nd July, 2005 passed by the Deputy Registrar rejecting the application filed by the petitioner.

7. Ms.Varashree Narayan, who appeared in person invited my attention to some of the annexures to the writ petition, including the agreement for sale between the petitioner and the erstwhile owner of garage no.56(II), the application for membership of the petitioner, the agreement dated 18th March, 1972 between

Mr.Gauridutt Mittal and others the then partners of the firm M/s.G. Mittal and Sons as the confirming parties and Mr.Purshottam V. Gadgil and others as the promoters of the proposed co-operative housing society and the respondent no.1 herein.

8. It is submitted by the petitioner that the lease of plot bearing C.S. No.941 had been assigned to the respondent no.1 society by the said builders by an agreement dated 18th March, 1972. The said builders had also conveyed the residential building to the respondent no.1 society under a Conveyance Deed dated 18th March, 1972.

9. It is submitted by the petitioner that she has been paying the maintenance charges to the respondent no.1 society in respect of the said garage no.56(II). The said garages are maintained by the members of a Committee who are the members of the respondent no.1 and thus the said Committee of the respondent no.1 and the Garage Committee are not two separate bodies. The respondent no.1 thus could not have refused to admit the petitioner as a member of the said society. Since the respondent no.1 did not respond to the application for membership filed by the petitioner, the petitioner became a deemed member of the respondent no.1 society. The Deputy Registrar as well as the Divisional Joint Registrar thus

ought to have allowed the proceedings filed by the petitioner.

10. The petitioner also strongly placed reliance on the affidavit dated 29th December, 2014 filed by Mr.Rajendra Kumar Mittal in Execution Petition No.14 of 2014 in Complaint No.CC/47/2010 filed by the petitioner against the respondent no.1 before the District Consumer Disputes Redressal Forum at South Mumbai District. She submits that in the said affidavit filed by Mr.Rajendra Kumar Mittal, who was one of the partner of M/s.G. Mittal and Sons, who had executed a Deed of Conveyance and the Agreement of Assignment in favour of the respondent no.1 has admitted that he had acquired the lease for City Survey No.941 for and on behalf of his builder firm M/s.G. Mittal and Sons. In paragraph 5 of the said affidavit, it was alleged that along with his 12 partners of M/s.G. Mittal and Sons, he had assigned all their rights, title and interests in 110 basement premises constructed on C.S nos.940 and 941 only to the respondent no.1 society vide registered Assignment Deed dated 18th March, 1972.

11. It is submitted that it is thus clear that the said plot of land bearing CTS no.941 on which the said garage no.56(II) owned by the petitioner is concerned was assigned in favour of the respondent no.1 by the then assignees vide registered Assignment Deed dated 18th March, 1972. The respondent no.1 therefore, could not have

refused to enroll the petitioner as a member in respect of the said garage constructed on the plot bearing CTS no.941.

12. Mr.Kantawala, learned counsel for the respondent no.1 on the other hand submits that M/s.G.Mittal & Sons. had constructed rehab building consisting of three buildings known as Dariya Mahal-1(A), Dariya Mahal-2(B) and Dariya Mahal-3(C) on the plot of land bearing C.S.No.437 and 354. All these three buildings had different societies, i.e. the respondent no.1 herein insofar as Dariya Mahal -1 building is concerned. Nav Dariya Mahal Co-operative Society Limited is formed insofar as Dariya Mahal – 2 building is concerned. Om Dariya Mahal Co-operative Society Limited is formed insofar as Dariya Mahal – 3 building is concerned. The builder has executed three separate deed of conveyance in favour of the societies to the extent of their areas. He submits that the garage no.56(II) claimed by the petitioner is situated on the land bearing City Survey no.941.

13. It is submitted by the learned counsel that beyond building Dariya Mahal-A building and Dariya Mahal-B building, there are two strips of lands which are horizontal and shown as plot nos. 940 and 941 which were not even in existence at the time of construction of those two buildings. The said rear portion was shown as sea, came to be reclaimed by the State Government. The State Government thus became entitled to those strips of land shown as foreshore land

bearing plot nos. 940 and 941 respectively. The State Government executed two different lease deeds in respect of those strips of land in favour of partners of M/s. G.Mittal & Sons, i.e. in respect of plot no. 940 dated 17th November,1971 and by another lease deed dated 2nd February, 1972 in respect of plot no.941. Those lease deeds are also annexed by the respondent no.1 to the affidavit in reply dated 5th December,2011 filed by the respondent no.1 society.

14. It is submitted that the said M/s. G.Mittal & Sons did not assign any such leasehold rights in respect of plot nos.940 or 941 in favour of the respondent no.1 society. The said builder had promulgated an administrative committee for the day-to-day management of those garages constructed on leasehold strips of land. The said builder vide their letter dated 24th September, 1985 had communicated to all garage holders that a separate administrative committee of Dariya Mahal Basement Garages will take care of management of those garages. It is submitted by the learned counsel that thus the garages constructed on plot bearing C.S. nos. 940 and 941 and the building nos.1 and 2 are four distinct and separate properties. The respondent no.1 is not at all concerned with the garage constructed on plot bearing no.941.

15. Insofar as the submission of the learned counsel for the petitioner that the petitioner has been paying maintenance charges to

the respondent no.1 society is concerned, it is submitted by the learned counsel that no such payments are made by the petitioner to the respondent no.1 society. He invited my attention to the letters addressed by the petitioner to the administrative committee of Dariya Mahal Basement Garages.

16. It is submitted that insofar as the affidavit filed by Mr.Rajendra Kumar Mittal in Execution Petition No.14 of 2014 filed before the District Consumer Redressal Forum is concerned, the contents of the said affidavit are strongly denied by the petitioner by filing an affidavit dated 18th March,2015. No such affidavit was filed before the two authorities below.

17. It is submitted by the learned counsel that the two authorities below have considered all the relevant facts and the law in the matter and have rightly rejected the application filed by the petitioner under section 23(2) of the MCS Act and the revision application respectively. The findings of fact rendered by the authorities cannot be interfered with by this court.

18. It is contended by the petitioner in rejoinder that if this court comes to the conclusion that there was no assignment of lease of plot bearing city survey no.941 in favour of the respondent no.1, in that event this court may direct the Municipal Corporation to issue a separate property tax bill in favour of the petitioner in respect of the

said garage owned by the petitioner.

REASONS AND CONCLUSION :

19. It is not in dispute that when the agreement dated 18th March, 1972 was executed by the builder Mr. Gauridatt Mittal and others in favour of the respondent no.1 society, the garages including garage no.56(II) were not even constructed. A perusal of the said agreement dated 18th March, 1972 does not indicate that the plot bearing City Survey No.941 was conveyed to the respondent no.1 society by the builder. The petitioner could not produce any other document before this court in support of her submission that the builder had assigned the leasehold right granted in their favour in respect of plot bearing city survey no.941 in favour of the respondent no.1 society.

20. Insofar as reliance placed by the petitioner on the affidavit dated 29th December, 2014 filed by Mr. Rajendra Kumar Mittal is concerned, the said affidavit appears to have been filed by him who was one of the partner of M/s. G. Mittal & Sons who had acquired the lease for the plot bearing city survey no.941 from the State Government in the said application under Execution Petition No.14 of 2014. The said affidavit admittedly could not have been part of the record before the two authorities below. Be that as it may, the petitioner herself has annexed a copy of the cross examination of

Mr.Rajendra Kumar Mittal before the learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar, Mumbai. When the said witness was asked in cross examination whether he had any supporting document about the deposition made by him in affidavit dated 29th December,2014, the said Mr.Rajendra Kumar Mittal deposed that it was true that he had not executed any registered document in favour of the respondent no.1 in respect of the garage in question.

21. In my view, in view of this cross examination of the said Mr.Rajendra Kumar Mittal, even if affidavit dated 29th December, 2014 is considered by this court in this writ petition at this stage, it would not advance the case of the petitioner. The said affidavit has to be read with cross examination of the said Mr.Rajendra Kumar Mittal which clearly falsifies the case of the petitioner that the leasehold rights of M/s.G.Mittal and Sons were assigned in respect of plot bearing city survey no.941 in favour of the respondent no.1 society.

22. Insofar as the submission of the petitioner that the respondent no.1 had been collecting the maintenance charges from the petitioner in respect of the said garage no.56(II) and thus the respondent no.1 could not refuse to enroll the petitioner as a member of the society is concerned, a perusal of the record produced by the respondent no.1 in the affidavit in reply indicates that all the

correspondence were addressed by the petitioner to the administrative committee of Dariya Mahal Basement Garages. The said administrative committee Dariya Mahal Basement Garages was maintaining a separate account. The builder M/s.G.Mittal and Sons had formed the said separate committee for the purpose of maintaining the garages constructed on the leasehold strip of land. The said builder vide their letter dated 24th September, 1985 had communicated to all garage holders that a separate administrative committee of Dariya Mahal Basement Garages will take care of management of those garages. The respondent no.1 had annexed a copy of the said letter at Ex.E to the affidavit in reply.

23. For the reasons aforesaid, I am unable to accept the submission of the petitioner that the petitioner had been paying the maintenance charges in respect of the said garage no.56(II) to the respondent no.1 society. In my view since the leasehold rights in favour of the said builder M/s. G.Mittal and Sons in respect of the plot bearing city survey no.941 was not assigned by the said builder in favour of the respondent no.1 society, the question of the respondent no.1 enrolling the petitioner as a member of the said society in respect of the said garage did not arise. The question of any deemed membership in favour of the petitioner thus did not arise. In my view the said application/appeal filed by the petitioner before the

Deputy Registrar itself thus was not maintainable. Both the authorities below have considered all these documents and submissions advanced by both the parties and have rendered various findings of fact. Those findings of fact rendered by the two authorities below being not perverse, cannot be interfered with by this court in this petition filed under Article 226 of the Constitution of India. The petition is devoid of merits. I, therefore, pass the following order :-

- a). Writ Petition No.925 of 2011 is dismissed.
- b). Rule is discharged.
- c). If any application is made by the petitioner to the Municipal Corporation of Greater Mumbai for issuance of separate assessment bills in respect of the said garage no.56(II) constructed on land bearing city survey no.941, the Municipal Corporation to consider the said application on its own merits.
- d). There shall be no order as to costs.

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(R.D. DHANUKA, J.)