

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2429 OF 2019

(VIJAYANAND CO-OPERATIVE HOUSING SOCIETY LTD....VS.. DIVISIONAL JT. REGISTRAR COOP
 SOCIETIES & OTH.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri Pradeep Marpakwar, Advocate for Petitioner.
 Shri Neeraj Patil, A.G.P. for Respondent Nos. 1 & 2.
 Shri A.D. Girdekar, Advocate for Respondent No.3.

CORAM : Z.A.HAQ, J.

DATED : JULY 02, 2019.

Heard.

2. The Petitioner/Co-operative Society has challenged the orders passed by the subordinate Courts, concurrently holding that the respondent No.3 is entitled for membership of the Co-operative Society. The subordinate Courts have directed the Petitioner/Co-operative Society to grant membership to the respondent No.3.

3. The Petitioner/Co-operative Society had entered into an agreement with Shri Shyam Dashrath Lohbhare (undisputedly member of the Petitioner/Co-operative Society) in respect of an apartment in the building of the Petitioner/Co-operative Society. The Transfer Deed dated 26th August 2002 was executed by Shri Shyam Dashrath Lohbhare in favour of the respondent No.3 and it was notarized. On 24th August 2015, the respondent No.3 applied for membership of the Petitioner/Co-operative Society. The Petitioner/Co-operative Society failed to take any decision on the

application made by the respondent No.3 and therefore, the respondent No.3 approached Deputy Registrar, Co-operative Societies by application under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act of 1960"). By order dated 28th June 2018, the Deputy Registrar, Co-operative Societies allowed the application filed by the respondent No.3 and held that the respondent No.3 is entitled for membership of the Petitioner/- Co-operative Society and directed the Petitioner/Co-operative Society to take appropriate steps in the matter. The order passed by the Deputy Registrar, Co-operative Societies was challenged by the Petitioner/Co-operative Society before the Divisional Joint Registrar by filing revision application under Section 154 of the Act of 1960. This revision application is dismissed by the impugned order.

4. The claim of the respondent No.3 for membership of Petitioner/Co-operative Society is opposed mainly on the ground that the respondent No.3 cannot claim membership on the basis of the notarized document as it does not create any right in favour of the respondent No.3. In the order passed by the Divisional Joint Registrar it is recorded that documents are produced on record which show that the Petitioner/Co-operative Society had granted membership to other persons on the basis of letter of possession and Transfer Deed. The learned Advocate for the respondent No.3 has submitted that those transfer deeds on the basis of which other persons were granted membership are also notarized documents. The learned Advocate for the petitioner has not been able to controvert this factual position. In the petition, there is no challenge to the finding recorded by the Divisional Joint Registrar on this factual position.

The learned Advocate for the Petitioner/Co-operative Society relied on the judgment given in the case of *Nilkanth Vs. Bhaurao*, reported in **2008(4) Mh.L.J. 215** to support the submission that notarized document is not admissible in evidence. The legal proposition laid down in the above referred judgment is well settled. However, issue which arises for consideration in the present matter is different. The notarized document is relied upon by the respondent No.3 for collateral purposes, hence, the judgment relied upon by the Advocate for the Petitioner/Co-operative Society does not assist it.

5. In view of the above, challenge to the impugned orders on the ground that the respondent No.3 cannot claim membership on the basis of the notarized document cannot be accepted. At the time of hearing, a query was put to the learned Advocate for the Petitioner/Co-operative Society as to whether the respondent No.3 is otherwise eligible or not to become member of the Petitioner/Co-operative Society. Nothing is pointed out on behalf of the Petitioner/Co-operative Society because of which it can be said that the respondent No.3 is not eligible to become member of the Petitioner/Co-operative Society. Hence, I see no reason to interfere with the impugned orders.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE