

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4450 OF 2019

Rajatkumar Jagatkumar Tiwari and Anr. ...Petitioners
vs.
Shram Safalya Govt. Servant Co-Operative
Housing Society Limited and Ors. ...Respondents

Mr. Sampatrao Pawar, for the Petitioners
Ms. Kalpita Sane, for Respondent No. 1.
Ms. Geeta Sonawane, AGP for Respondent Nos. 2 and 3.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 11, 2020

P.C.:

- . Heard the learned counsel for the parties.
2. The challenge in this Petition is to the order passed by the learned Divisional Joint Registrar, Cooperative Societies, Division Mumbai in Revision No. 551 of 2016 dated 27th February, 2019 whereby the Divisional Joint Registrar was persuaded to partly allow the Revision Application No. 551 of 2016 and remit the matter back to Deputy Registrar, Cooperative Societies, H/W ward, Mumbai for fresh consideration of the application for membership in the Respondent No. 1- Society, preferred by the Petitioner under section 22(2) of the Maharashtra Cooperative Society Act, 1960 (hereinafter referred to as "the Act").
3. In the backdrop of the limited nature of controversy, it may

not be necessary to delve deep into the facts of the instant Petition. It would suffice to note that the Petitioners herein had filed an application for direction to Respondent No. 1- Society to admit the Petitioners as member of the Society, on 18th January, 2016. The Petitioners claims that the Dy. Registrar, Cooperative Societies was enjoined to forward the said application to Respondent No. 1 - Society within a period of thirty days, however, the said application was forwarded by Respondent No. 2 to Respondent No. 1 - Society on 26th May, 2016. In the meanwhile, the Petitioners had preferred the application under section 22(2) of the Act. Noticing that there was non-compliance with the provisions contained in section 23(1) (A) of the Act, in as much as Respondent No. 2 had not forwarded the application in respect of the membership to Respondent No. 1 - Society and there was no inaction on the part of the Respondent No. 1 - Society to take a decision on the said application, the Petitioner filed an application for withdrawal of the said application under section 22(2) of the Act, before Respondent No. 2, on 30th May, 2016 with liberty to file a fresh application.

4. By an order dated 19th October, 2016, Respondent No. 2 dismissed the application under section 22(2) of the Act. In fact, Respondent No. 2 had observed that in view of the non-compliance of the provisions contained in section 23(1)(A) of the Act, the

application was premature and thus it was not necessary to go into the merits of the matter. Yet, Respondent No. 2 went on to dismiss the application, without adverting to the prayer of the Petitioners to withdraw the application with liberty to file a fresh application, after compliance with the provisions of the Act.

5. In the Revision Application No. 551 of 2016, preferred by the Petitioners, the Respondent No. 3, observed that the application came to be dismissed on a technical ground. Thus, it was necessary to remit the matter back to Respondent No. 2 for afresh consideration on merits, after following the due process of law. Hence, the Petitioners have invoked the writ jurisdiction of this Court.

6. Evidently, the Petitioners sought withdrawal of the application filed under section 22(2) of the Act as Respondent No. 2 had not complied with the statutory mandate under section 23(1) (A) of the Act. The application was preferred by the Petitioners on 18th January, 2016. The said application was not forwarded to Respondent No. 1 – Society within the stipulated period. It came to be forwarded by Respondent No. 2 on 26th May, 2016. The withdrawal application came to be preferred by the Petitioners on 30th May, 2016 as the requirement under section 23(1)(A) of the Act were not complied with and, thus, there was, ex-facie, a formal

defect in the application. In the circumstances, the Dy. Registrar despite observing that the application was premature and it was not warranted to embark upon an inquiry on merits, dismissed the application.

7. Proper course in the given circumstances would have been to permit the Petitioners to withdraw the application with liberty to file a fresh application after complying with the statutory requirements. The order passed by Respondent No. 3 also suffers from infirmity as no fruitful purpose would be served by remitting the matter for determination on merits as the application could not be dealt with on merits in view of non-compliance of the provisions contained in section 23(1)(A) of the Act.

8. The learned counsel for Respondent No. 1- Society submits that during the intervening period the Petitioners have obtained an order from the Collector for grant of membership in the Respondent No. 1- Society without impleading Respondent No. 1 – Society as a party to the said proceedings. It is further submitted that the said order is assailed by Respondent No. 1 by filing proceedings before the Divisional Commissioner. The learned counsel for Respondent No. 1 made a grievance that the Respondent No. 1 was unnecessarily dragged in the proceedings without complying with the statutory requirements.

9. The submission on behalf of Respondent No. 1 may have some substance. However, having regard to the nature of the order passed by the Dy. Registrar and the Joint Registrar, remitting the matter back to the Dy. Registrar for deciding the application under section 22(2) of the Act is wholly unwarranted and otiose. Hence, the Petition deserves to be allowed. Thus, the following order:

10. The Petition stands allowed.

11. The impugned order passed by Respondent Nos. 2 and 3 is hereby quashed and set aside.

12. The application preferred by the Petitioners seeking leave to withdraw the application under section 22(2) of the Act with liberty to file a fresh application stands allowed with liberty as prayed for.

13. There shall be no order as to costs.

14. The Petition stands disposed of.

(N. J. JAMADAR, J.)