

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4959 OF 2005

WITH

CIVIL APPLICATION NO.2829 OF 2006 IN W.P.NO.4959 OF 2005

Lok Centre Corporate Park Premises Co-operative Society Limited through its Secretary, Pradyumn Sharma and others	...	Petitioners
Vs.		
Lok Housing & Constructions Ltd. and others	...	Respondents

Mr. Suresh Rajeshwar for Petitioners.
Mr. C. D. Mali, AGP for Respondent Nos.2 and 3.

CORAM : UJJAL BHUYAN, J.

DATE : JANUARY 02, 2020

P.C. :

Heard Mr. Rajeshwar, learned counsel for the petitioners and Mr. Mali, learned AGP for respondent Nos.2 and 3.

2. None has appeared for respondent No.1 though served.
3. This petition has been filed under Article 227 of the Constitution of India for quashing of order dated 06.07.2005 passed by the Divisional Joint Registrar of Co-operative Societies, Mumbai Division, Mumbai in Application No.17 of 2005 filed by respondent No.1 by de-registering the petitioner i.e. Lok Centre Corporate Park Premises Co-operative Society Limited.
4. It may be mentioned that respondent No.1 is a company incorporated under the Companies Act, 1956 and as the developer undertook development of the property in question situated at Village Marol, Andheri (East), Mumbai - 400 059. Respondent No.1 as part of the development project had constructed several buildings. In the related

building constructed, there were 56 units. Occupancy certificate was obtained in the year 1996. Respondent No.1 had executed agreements selling 44 units out of 56. Out of 44 units sold, ICICI Bank had purchased 13.

5. Respondent No.1 as the developer was under legal obligation to form a co-operative society amongst the purchasers of the units but for long 9 years, respondent No.1 did not take any steps for constitution of co-operative society.

6. In view of such default by respondent No.1, the unit holders themselves at their own initiative formed a co-operative society under the name and style of 'Lok Centre Corporate Park Premises Co-operative Society Limited' ('petitioner society' hereinafter).

7. Thereafter, the petitioner society submitted proposal before the Deputy Registrar of Co-operative Societies, K-East Ward, Mumbai for registration under the Maharashtra Co-operative Societies Act, 1960 (briefly 'the Act' hereinafter).

8. On being satisfied, Deputy Registrar passed order dated 18.03.2005 granting registration to the petitioner society.

9. This came to be challenged by respondent No.1 before the Divisional Joint Registrar of Co-operative Societies, Mumbai Division, Mumbai i.e., respondent No.3 by filing Application No.17 of 2005. The application was filed under Section 21/A of the Act alleging misrepresentation while obtaining registration. By order dated 06.07.2005, respondent No.3 de-registered the petitioner society and appointed one Assistant Registrar of Co-operative Societies as an official assignee to oversee activities of the petitioner society.

10. It is this order which has been impugned in the present proceeding.

11. This Court by order dated 02.08.2005 directed maintenance of status-quo as on that date. By order dated 11.07.2006, the writ petition was admitted for hearing and the status-quo order granted on 02.08.2005 was directed to be continued.

12. An application was filed by respondent No.1 for vacation of the order dated 11.07.2006 which was registered as Civil Application No.2153 of 2008. By order dated 12.01.2009, the said application was rejected.

13. Submissions made by learned counsel for the parties have been considered.

14. Short point for consideration is whether respondent No.3 was justified in canceling the registration granted to the petitioner society thereby de-registering it?

15. At the outset order dated 18.03.2005 passed by respondent No.2 whereby registration was granted to the petitioner society may be adverted to. Relevant portion of the order dated 18.03.2005 is extracted hereunder:

“ Considering the documents presented by the Chief Promoter and the arguments of the Advocate Vaidya, the following conclusions are drawn.

- 1) Out of total 56 units 44 Unit holders have participated in the registration proposal.
- 2) Except 3 to 4 units, all the units in the building have been sold.
- 3) The Unit holders participating the registration proposal have submitted the Xerox copy of their registered documents.
- 4) The Municipal Corporation has given the Occupation Certificate to the said building. Etc.

Considering the above conclusions, I am satisfied that society be registered considering the interest of the Society's members.

O R D E R

I, Rajesh Kulkarni, Deputy Registrar, Co-operative Societies, K-East Ward, vide the powers vested upon me under Section 6(1) of the Maharashtra Co-operative Societies Act 1960 hereby vide this Order Register the Lok Centre Corporate Park Co-operative Premises Society Ltd. C.T.S.No.517A, Marol Maroshi Road, Andheri (E), Mumbai 400 056, Society under the heading Developer Un-Cooperative.

The said order is issued with my Sign and seal on this 18-3-2005.”

16. From a perusal of the above, it is seen that respondent No.2 was satisfied on perusal of the record that out of the total 56 units, only 3 to 4 units remained unsold at the time of registration. 44 unit holders participated in the registration proposal. The other documents pertaining to purchase of units were duly scrutinized. Respondent No.2 also noted that Municipal Corporation had given occupation certificate in respect of the building in question. Therefore, taking the view that it would be in the interest of the members that the petitioner society should be registered, respondent No.2 registered the petitioner society after noting that the developer i.e., respondent No.1 was non co-operative.

17. Respondent No.1 thereafter filed application under Section 22/A of the Act seeking de-registration of petitioner society on the ground of misrepresentation. After hearing the parties, respondent No.3 passed the impugned order dated 06.07.2005 de-registering the petitioner society. Relevant portion of the order dated 06.07.2005 is extracted hereunder:

“I have perused the application, Reply filed by the Respondents along with documents / papers attached thereto, I have also heard the advocates for arrival parties. All the first instance, it is observed that the applicants have not been given an opportunity of being heard in the interest natural justice and been given an opportunity of being heard in the interest natural justice and equity and that the Registration Proposal is finalized hurriedly in a single hearing i.e. On 18.03.2005 instead of giving time to the applicants to comply with the requisition of furnishing with relevant documents / information. Further the Respondent no.1 neglected that even though single person / company purchased more than one units, such person / Company should be counted as one and that the persons joining to the registration proposal must be a member of different family. That as per Government Directives date 24.7.1992 and 13.2.1997, the strength of the promoters shall not be less than 60% of the unit purchasers as per approved plan. In present case, it is admitted fact that as per approved plan there are 56 shops and 60% of it comes to 33.6% to 34 persons. As per Respondent nos.2 & 3, the applicants alleged to have sold more than 44 units and that 33 persons have joined the registration on proposal but conveniently failed that out of these shops, 10 shops belong to a single party and 3 shops are in single and / or joint name of one and the same family members and thus strength arrives to 22 that means no compliance to the aid condition. The chief Promoter had thus misrepresented to Respondent no.1 which resulted in registering Respondent no.3 society in a manner which is not permissible in law. I am therefore inclined to de-register the Respondent society and that the judgments referred to by the Ld. Advocates for Respondents are not applicable to present case whereas the authority of the Hon’ble Supreme Court cited by the Advocate for applicant is squarely applicable.

In view facts and circumstances, I am satisfied that the Respondent No.3 society is registered on misrepresentation made by the Chief Promoters hence, I proceed to pass the following order.

ORDER

1. The Application is hereby allowed.
2. The Respondent no3 society which is registered on 18.3.2005 by the Deputy Registrar C.S.K-E Ward, Mumbai is hereby De-registered u/s 21A of the M.C.S. Act 1960.
3. Shri A. R Sasawade, Assistant Registrar C.S.'C' Ward Mumbai is hereby appointed as an Official Assignee over the aforesaid society to act upon accordingly.
4. No order as to cost."

18. A perusal of the order dated 06.07.2005, as extracted above, would go to show that respondent No.3 took the view that respondent No.1 was not given an opportunity of hearing before petitioner society was granted registration. Respondent No.3 agreed with the contention of respondent No.1 that though 44 units were sold, 10 units belonged to one singly party and another 3 units belonged to another single party, which were treated as one member each. Therefore, on that analogy, respondent No.3 arrived at the conclusion that the registration proposal was supported by 20 members out of 56 units, which was not in accordance with law. Therefore, he proceeded to de-register petitioner society.

19. The aforesaid order passed by respondent No.3 cannot be sustained in law for more than one reason. Firstly, under Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (briefly 'the MOFA Act' hereinafter), promoter is under a legal obligation to take steps for formation of a co-operative society of persons who have

purchased flats in the building constructed and for registration thereof. As per Section 11, a promoter is also under a legal obligation to take all necessary steps to complete his title and to convey the same to the organization of persons who take flats, which is registered either as a co-operative society or as a company or as an association of flat takers or apartment owners, his right, title and interest in the land and building.

19.1. As per proviso to sub-section (1) of section 10, if the promoter fails to take steps for registration of the co-operative society within the prescribed period, the competent authority may upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar or the Deputy Registrar or the Assistant Registrar to register the co-operative society.

19.2. Promoter is defined in Section 2(c) of the MOFA Act to mean ‘a person’ which includes a partnership firm or a body or association of persons, who constructs or causes to be constructed a block or building of flats or apartments for the purpose of selling to other persons or to a company, co-operative society or other association of persons and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both.

19.3. Under Section 15 of the MOFA Act, Government of Maharashtra has framed a set of rules called ‘The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964. As per Rule 8, a promoter has to submit application to the Registrar of Co-operative Societies for registration of the co-operative society within 4 months from the date on which the minimum number of persons required to form such organisation have taken flats.

19.4. It is not in dispute that respondent No.1 is the promoter. It is also not in dispute that respondent No.1 failed to take steps for formation of

co-operative society within the prescribed period. Therefore, as per the proviso to sub-section (1) of Section 10, the flat purchasers had formed the co-operative society amongst themselves and thereafter applied for registration.

20. Secondly, as would be evident from the above, respondent No.1 had defaulted in forming the co-operative society, which was a statutory obligation under Section 10(1). Having so defaulted, it was not open to respondent No.1 to subsequently raise objection as to registration of the co-operative society formed by the flat purchasers. A defaulter cannot take advantage of his own default.

21. Thirdly, view taken by respondent No.3 that since one purchaser had purchased 10 units and another had purchased 3 units, they should be treated as one unit holder may not be the correct proposition. Since there were total 10 units in the first case, it was immaterial that the purchaser was one. As the purchase related to 10 units, each unit holder was required to be treated as a separate entity for the purpose of registration though it could have been one purchaser.

22. Fourthly, even if the view taken by respondent No.3 is taken to be correct, Section 6 of the Act requires that for the purpose of registration of a society, it must consist of at least 10 persons; therefore, the minimum requirement for registration of a co-operative society is 10 persons. As per the impugned order, there were 20 unit holders at the time of registration. The same still meets the requirement of Section 6 of the Act.

23. Lastly, in any view of the matter, no finding could have been recorded that there was misrepresentation on the part of the petitioner society at the time of registration warranting de-registration. The alleged misrepresentation was on the basis of an interpretation of respondent No.3 which this Court has found to be not correct.

24. Therefore, in view of the discussion made above and on due consideration, impugned order dated 06.07.2005 is wholly untenable in law and cannot be sustained. It is accordingly set aside and quashed.
25. Writ petition stands allowed but without any order as to costs.
26. Connected civil application is also disposed of accordingly.

(UJJAL BHUYAN, J.)

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