

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9759 OF 2010

1. Jeevan Niwas Co-operative Housing Society Ltd. a society registered under the Magistrate Co-operative Societies Act, 1960, having its office at 87, Worli Sea Face, Mumbai – 400 030.

2. Mr. Tarachand Chawla
The Secretary of Jeevan Niwas Co-operative Housing Society Ltd., Indian Inhabitant, residing at Flat No.3A, Jeevan Niwas Co-operative Housing Society Ltd.
87, Worli Sea Face, Mumbai – 400 030.

..Petitioners

Vs.

1. The State of Maharashtra
through Department of Co-operation
& Textiles, Mantralaya, Mumbai

2. Shri. Harshvardhan Patil
The Hon'ble Minister,
Co-operation, Marketing and Textiles,
Maharashtra State, Mantralaya, Mumbai.

3. The Divisional Joint Registrar,
Co-operative Societies, Mumbai Division,
Mumbai.

4. Mr. Bhupender Pamnani
Indian Inhabitant, residing at Jeevan
Niwas Co-operative Housing Society Ltd.
87, Worli Sea Face, Mumbai – 400 030.

..Respondents

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Mr. Kalpesh Nansi a/w. Sayeed Mulani, Advocate for Petitioners.
Ms. V. S. Nimbalkar, AGP for Respondent Nos.1 to 3 / State.
Ms. Kinjal Jain a/w. Shaba Khan i/b. R. V. Govilkar, Advocate for
Respondent No.4.

CORAM : C. V. BHADANG, J.

RESERVED ON: 27th JANUARY, 2020

PRONOUNCED ON: 16th MARCH, 2020

JUDGMENT :

The challenge in this petition under Article 227 of the Constitution of India is to the order dated 8/11/2010 passed by the second respondent Hon'ble Minister for Cooperation, Marketing and Textiles, thereby setting aside the order dated 15/1/2009 passed by the third respondent Divisional Joint Registrar of Co-operative Societies. The net result is that the challenge raised by the fourth respondent to the certificate of registration of the petitioner No.1 society has been upheld.

2. The brief facts necessary for the disposal of the petition may be stated thus-

That the petitioner No.1 is a society registered under the Maharashtra Co-Operative Societies Act, 1960 ('Act' for short). The petitioner society is registered as per order passed by the Deputy Registrar of Co-operative Societies, Mumbai on 16/1/1987. According to the petitioners, the building of the society comprises of 14 constructed units, out of that the purchasers of 10 units from the developer M/s. Jeevan Development Corporation, had joined in the formation of the society. The remaining four unsold units were held by the developer M/s. Jeevan Development Corporation which are shown as "unsold flats". In respect of these four units, the said Corporation is the member of the society holding share certificate Nos.11 to 14 issued in the year 1988-89.

3. The fourth respondent / complainant who is seeking de-registration of the petitioners' society was a partner of M/s. Jeevan Development Corporation. According to the petitioners, there were outstanding dues in respect of the unsold flats to the extent of Rs.75 Lakhs as on 30/11/2010. In the year 1997, the society had applied for certificate under Section 101 of the said Act which was granted by the Deputy Registrar and which order was confirmed in revision application by the Divisional Joint Registrar. There is a chequered history to the litigation between the parties. For the limited purpose of deciding the present petition, it is not necessary to set out the same in details. Suffice it to mention that in August 2004 the fourth respondent filed an application before the learned Divisional Joint Registrar of the Co-operative Societies, challenging the certificate of registration of the petitioner No.1 issued on 16/1/1987. The learned Divisional Joint Registrar rejected the application on 15/1/2009 which was challenged by the fourth respondent before the second respondent in Revision Application No.213/2009 under Section 154 of the said Act. The second respondent by the impugned order dated 11/11/2010 has allowed the revision application and has set aside the order dated 15/1/2009 passed by the Divisional Joint Registrar of Co-operative Societies. The second respondent has directed de-registration of the society under Section 21A of the said Act, which order is subject matter of challenge in this petition.

4. I have heard Mr. Kalpesh Nansi, the learned counsel for the petitioners, learned AGP for the respondent Nos.1 to 3 / State and Mr. Govilkar, the learned counsel for the respondent No.4. With the

assistance of the learned counsel for the parties, I have gone through the record.

5. It is submitted by the learned counsel for the petitioners that the revision application was heard by the Hon'ble Minister on 9/9/2009 and the same was closed for orders. Thereafter, belatedly the respondent No.4 filed an application on 29/7/2010 for rehearing of the same on the ground that he had not received the notice on the earlier occasion. In pursuance of the same, the Hon'ble Minister reheard the matter on 17/8/2010, in absence of the petitioners and the impugned order came to be passed. It is submitted that the petitioners were never served of any notice of the re-hearing which was conducted by the Hon'ble Minister on 17/8/2010 which is in breach of the principles of natural justice.

6. It is next submitted that the petitioners had filed a written synopsis of the arguments on 11/9/2009 which have not been considered by the Hon'ble Minister which would be evident from the fact that the Hon'ble Minister records that there were no written or oral submissions made by the petitioners in spite of an opportunity being granted. It is submitted that the impugned order of de-registration entails civil consequences and the same cannot be passed in flagrant breach of principles of natural justice. In this regard reliance is placed on the decision of this Court in the case of **Oshiwara Co-operative Housing Society Ltd. and others Vs. State of Maharashtra and others (in Writ Petition No.2790/2010) decided on 7/7/2011** in which insimilar circumstances the matter was remitted back to the Hon'ble Minister. Reliance is also placed on the decision of this Court in the case of **Kumbhargaoon Vividh Karyakari**

Sahakari Seva Society Ltd. Vs. Assistant Registrar, Co-op. Societies, Patan and Ors. 1993 (1) Bom.C.R. 586.

7. It is submitted that in such circumstances, it would be appropriate that the matter is remitted back to the Hon'ble Minister instead of this Court assuming the powers of the appellate revisional authority. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others Vs. Raja Ram Jaiswal and Others AIR 1985 SC 1108.**

8. The learned counsel has pointed out that the petitioners had filed Civil Application No.1883/2019 in this petition seeking to amend the petition by raising the ground of violation of principles of natural justice. That application was dismissed by this Court on 23/9/2019 which was challenged by the petitioners before the Hon'ble Supreme Court in Special Leave Petition No.27784/2019. The Hon'ble Supreme Court while permitting to withdraw said SLP on 29/11/2019 had granted liberty to the petitioners to raise the legal question about the absence of the hearing by the Hon'ble Minister.

9. On the contrary, Mr. Govilkar, the learned counsel for the respondent No.4 has submitted that on 9/9/2009 hearing was conducted before the Hon'ble Minister in the absence of the respondent No.4. It is pointed out that the copy of the synopsis of the arguments dated 11/9/2009 of the petitioners were never served on the respondent No.4. It is in these circumstances that on 16/7/2010 a letter was addressed to the Hon'ble Minister followed by an application dated 29/7/2010 for re-hearing of the matter. It is

submitted that a letter was issued on 3/8/2010 fixing the hearing on 7/8/2010 to all the concerned parties. It is the specific contention on behalf of the respondent No.4 that one Mr. Vijay Pamnani alongwith one security supervisor, were present on behalf of the petitioners society before the Minister on 17/8/2010 and therefore the ground of alleged breach of principles of natural justice, in the submission of Mr. Govilkar, cannot be accepted.

10. It is pointed out that the petitioners have never made out a case about absence of the notice of hearing dated 17/8/2010. It is submitted that amendment to that effect was sought to be made after nine years of the admission of the petition which amendment was rejected. It is contended that although there is no roznama regards the attendance of the parties, Mr. Vijay Pamnani was present during the course of the hearing as a representative of the society. It is submitted that the observation in the impugned order passed by the second respondent that there were no oral or written submissions made on behalf of the petitioners (the respondent No.1 before the Minister) despite opportunity, is not strictly correct. It is submitted that even otherwise the opportunity to file the written submission on 11/9/2007 is sufficient compliance with the rule of *audi alterm partem* and oral submission is not necessary or essential requisite in every case.

11. It is submitted that the promoter had made a statement which was found to be fraudulent and in the nature of misrepresentation on the basis of which the society was registered and that aspect is never challenged and therefore order cancelling the registration which was otherwise granted on the basis of misrepresentation need

not be interfered with. It is submitted that petitioners have not shown as to how they are prejudiced on account of the alleged absence of the hearing by the respondent No.2. Lastly, it is submitted that the challenge in this petition is beyond the scope of Article 227 of the Constitution of India as per the decision of the Supreme Court in the case of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil (2010) 8 SCC 329**.

12. I have considered the submissions made. The record discloses that the Hon'ble Minister heard the oral submissions on 9/9/2009 and the matter was closed for orders. The petitioners filed written submissions on 11/9/2009. It is only on 29/7/2010 that the respondent No.4 sought rehearing of the matter on the ground that he was not present during the earlier hearing. It thus appears that Hon'ble Minister decided to rehear the matter and such rehearing was scheduled on 17/8/2010. The material contention on behalf of the petitioners is that the petitioners were neither noticed nor were present on 17/8/2010 and thus the impugned order passed upon holding of the rehearing behind their back is vitiated on account of the breach of principles of natural justice.

13. It is contended on behalf of the respondent No.4 that on 17/8/2010 one Mr. Vijay Pamnani alongwith one security supervisor were present on behalf of the society. However, it is not disputed that there is no roznama / record of proceedings showing the presence of Mr. Vijay Pamnani or anybody else on behalf of the society.

14. It is true that this ground was not initially raised by the petitioners in the petition and an application being Civil Application No.1883/2019 was filed seeking the amendment by introduction of para 22(B) as under -

22 B) It is submitted that after the date of the hearing, i.e. 9th September, 2009, oral submissions were made on behalf of the Petitioner, thereafter the matter was closed for orders. The petitioner sought permission to file written submissions and accordingly the written submissions were submitted on 11th September, 2009 by the petitioner. It appears from the impugned order that after a period of about eleven months after the matter was closed was orders the Respondent No.2 posted the matter for re-hearing on 17th August, 2010 on an application made by the Respondent No.4. The petitioners were not present on that date and in their absence and without hearing them the impugned order was passed Ex-parte against the petitioners. Thereafter, the impugned order was received by the petitioner society.

15. It is further a matter of record that the said application was dismissed by this Court on 23/9/2019, which was challenged by the petitioners before the Hon'ble Supreme Court in SLP No.27784/2019. That SLP was permitted to be withdrawn on 29/11/2019 with the following order.

ORDER

Learned counsel for the petitioner has submitted that the petitioner will raise the legal

question that hearing was not granted while the matter was reheard for the second time and in case the final decision is rendered against it, the petitioner may be permitted to question the order dated 23/3/2019 passed by the High Court afresh, in accordance with law.

Both the above mentioned liberties are granted.

The special leave petition is, accordingly, permitted to be withdrawn.

16. It can thus clearly be seen that in terms of the opportunity granted by the Hon'ble Supreme Court, the petitioners are permitted to raise the legal question about the absence of hearing when the matter was reheard by the Hon'ble Minister.

17. In order to appreciate the rival contentions, learned Additional Government Pleader was asked to produce the record of the proceedings before the Hon'ble Minister which is accordingly produced. I have gone through the same. The record does not indicate the presence of Mr. Vijay Pamnani or anybody else on behalf of the petitioners society on 17/8/2010. That apart what is significant is that the Hon'ble Minister in the impugned order records that there was no oral submissions or written submissions by the petitioners in the matter. It is totally contrary to the record in as much as the petitioners were heard on 9/9/2009 and there are also written submission on record which are filed on 11/9/2009. It is not disputed on behalf of the respondent No.4 that the said observation is "not strictly correct". However, according to the learned counsel for the respondent No.4 the written submissions

were already on record which are sufficient. The contention in my considered view cannot be accepted for more reasons than one firstly, filing of such submissions, is not always an alternative to oral submissions. That apart the impugned order records that there were neither oral submissions nor written submissions filed by the petitioners which would indicate that the Hon'ble Minister had no occasion to consider the oral submissions or the contents of the written submission which were there on record. Once it is found that the Hon'ble Minister had not considered written submissions on the erroneous assumption that there are no written submissions filed, even the filing of the written submissions in this case cannot be said to be sufficient compliance of the principles of natural justice. It would have been entirely a different case, had the Hon'ble Minister been cognizant of the filing of the written submissions and would have considered the same while passing the impugned order.

18. Coming to the rehearing held on 17/8/2010, there is absolutely no record that the petitioners were either noticed or were heard on the said date. There is also no record to show that any representative of the petitioners was present before the Hon'ble Minister on 17/8/2010. In such circumstances, in my considered view, the impugned order cannot be sustained for want of compliance with the principles of natural justice which go to the root of the matter. It cannot be accepted that there is no prejudice as such caused to the petitioners in as much as registration of the petitioners society which was subsisting from the year 1987 stood cancelled in the year 2010. Thus, without going into the merits of the matter, I find that the petition has to partly succeed and the matter needs to be remanded to the Hon'ble Minister for deciding it

afresh on its own merits and in accordance with law. In the result, the following order is passed.

ORDER

1. The petition is partly allowed.
2. The impugned order is hereby set aside.
3. Appeal No.213/2009 is restored back to file of the concerned Hon'ble Minister for deciding it afresh on its own merits and in accordance with law.
4. The parties to appear before the Hon'ble Minister on 15/4/2020 at 3.00 p.m.
5. The rival contentions on merits are left open.
6. Rule is partly made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.