

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

WRIT PETITION NO. 413 OF 2020

Gundecha Onclave Premises Co-operative Society Ltd.	 Petitioner
vs	
State of Maharashtra & Ors.	 Respondents

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Surel Shal i/b Kapil N. Gor and Satchit Gor for the Petitioner.
Manish Upadhye, AGP for Respondent Nos. 1 and 2.
Mayur Khandeparkar a/w Gauraj Shah, V. A. Joshi i/b Chitnis
Vaithy & Co. for Respondent No.3.

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CORAM : S.C. GUPTE, J.
DATED: FEBRUARY 20, 2020

P.C. :

Heard Learned Counsel for the parties.

2. This Writ Petition challenges an order passed by the Deputy Registrar of Co-operative Societies (L ward), Mumbai under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short "Act").

3. Sometime in 2013, the Petitioner society filed a recovery application before the Deputy Registrar for recovery of arrears of maintenance charges to the tune of about Rs. 5,21,08,981/- against Respondent No.3-developer. The application was under Section 101

of the Maharashtra Co-operative Societies Act, 1960. The purported arrears included maintenance charges and other outgoings in respect of unsold premises in the suit building owned by the co-operative society. It was the case of the Petitioner that Respondent No.3, as a developer holding unsold inventory, was liable to pay maintenance charges and outgoings to the society. By his order dated 21 March, 2014, the Deputy Registrar dismissed the recovery application on the ground that the issues raised in the application were triable; they called for evidence; and these issues could appropriately be tried before a Co-operative Court under Section 91 of the Act. The matter was thereafter carried by the Petitioner before the Divisional Joint Registrar in revision. After hearing the revision application, the Divisional Joint Registrar remanded the matter to the Deputy Registrar. The Divisional Joint Registrar, whilst remanding the matter, observed that there was some dispute about calculation or quantum and that the defence was not of such nature where complicated and/or disputed questions of fact arose, which called for oral evidence or cross-examination. The Divisional Joint Registrar, accordingly, did not agree with the aforesaid observations of the Deputy Registrar. The Divisional Joint Registrar held that the application under Section 101 was maintainable and liable to be decided on merits. On this reasoning, the revision was allowed and the impugned order of the Deputy Registrar was quashed and set aside and the matter was remitted to the Deputy Registrar. It is submitted that in the premises, the Deputy Registrar, on remand,

had to determine the dues and not relegate the parties to a co-operative court under Section 91.

4. It is, however, clear that what the order of the Divisional Joint Registrar required the Deputy Registrar to do was to “decide Section 101 application afresh after hearing the parties in accordance with Law”. This clearly implied that the matter was wholly at large before the Deputy Registrar and he was not bound by any observation made by the Divisional Joint Registrar, including any observation about maintainability of the application under Section 101 of the Act. The Deputy Registrar, after hearing the application on remand, came to a conclusion that there were in fact several triable issues raised by the Respondent-developer. One of the issues concerned the correct interpretation of condition No.72 of the agreement for sale which provided for excusing the developer from payment of outgoings in the nature of maintenance to the society of unit purchasers in respect of unsold premises, his liability being restricted to payment of Municipal taxes alone. Various supplementary issues arose in respect of this agreement, particularly, concerning the validity of such agreement in the face of a statutory liability; whether there was free consent; whether the society was a party to the agreement and was bound by it, etc. The second important issue raised by the developer concerned the monthly maintenance to be charged to the transferees of the developer, who, according to the developer, were not admitted to the membership of the society. It was submitted by

the developer, in its reply to the application, that some of the so-called unsold area was actually sold by the developer to third parties and that the society had been charging maintenance from these purchasers. Another important issue raised by the developers concerned the extent of the unsold inventory in terms of area. Lastly, the developer also challenged various components of the maintenance charges, such as non-occupancy charges and interest, etc. Having regard to all these, the Deputy Registrar was of the view that these were triable issues and it was necessary to examine evidence and this involved cross-examination of witnesses and that, accordingly, the controversy did not pertain to the power or authority of the Deputy Registrar under Section 101.

5. Neither the assessment of the controversy by the Deputy Registrar nor the conclusions arrived at by him can be termed as perverse or impossible. These are all supported by some material on record. The Deputy Registrar has considered all relevant and germane materials and circumstances and has not taken into account any irrelevant or non-germane material or circumstance. Based on the material produced before the Deputy Registrar, the view that he has taken can certainly be termed as a possible and reasonable view. As we have noted above, since the entire controversy involved in the application under Section 101 of the Act was open for debate before the Deputy Registrar, including the question as to whether and to what extent evidence was called for

and whether it would be appropriate for the Deputy Registrar to exercise jurisdiction in the matter, no fault can be found with the assessment even on principle.

6. Besides from the point of view of justice of the case, it is not that the Petitioner society has been denied remedy. The Petitioner may very well be within its rights to approach an appropriate forum for redressal of its grievances for non-payment of these maintenance charges, such as a co-operative court under Section 91 of the Act.

7. There is, accordingly, no merit in the Writ Petition. The Writ Petition is dismissed. All rights and contentions of the parties on merits of the charges are however kept open.

(S.C. GUPTE, J.)