

Urmila Ingale

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

WRIT PETITION NO. 4011 OF 2021

Samarth Gardens CHS Ltd. Petitioner
Vs.
Dr.Swati Atmaram Sawant and ors. Respondents

Mr. Surel Shah a/w Mr.Mahesh Karale i/b Mr.Yogesh K. Deshpande,
for the Petitioner.
Mr.Maulik K. Tanna, for Respondent No.1.
Mr.P.V. Nelson Rajan, AGP for State.

CORAM : M. S.KARNIK, J.

DATE : 11th AUGUST, 2021

P.C. :

. Heard learned Counsel for the Petitioner and learned Counsel for Respondent No.1. The Petitioner - Society is challenging the order passed by the Divisional Joint Registrar rejecting the Revision filed by the Petitioner - Society. The Revision was filed by the Society against an order passed by the Assistant Registrar Co-operative Societies granting membership rights in favour of Respondent No.1 under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 ('the said Act' for short). The developer constructed the buildings A to E. The

Society is formed in respect of the building A to E. Learned Counsel for the Petitioner relied upon an agreement between the developer and purchasers in respect of building F and G where it is specifically mentioned in clause 19 that the purchaser will join as member of the said Society (Petitioner) and in case the said Society does not admit the purchaser as its member, the developer will form a separate Society of the purchasers in respect of the Wings F and G. It is the contention of the learned Counsel for the Petitioner that the amenities which are available to the occupants of Wings A to E as provided by developer are not even enough for the members occupants of building A to E. It is therefore his submission that the developer will have to form a separate Society for building F and G and it is not possible for the Petitioner - Society to admit Respondent No.1 as its member.

2. On the contrary, it is the case of the Respondent No.1 that by resolution dated 07/02/2010, the Society had resolved to even admit members of the flat purchasers of the building F and G as members of the said Society.

3. Heard. Respondent No.1 is a flat purchaser in respect of the G wing pursuant to the agreement of sale dated

11/07/2011. On 01/07/2018 an application was made by Respondent No.1 to the Petitioner - Society for membership of the Petitioner- Society. The letter addressed to the Petitioner - Society containing the application for membership was returned unclaimed. Thereafter the Respondent No.1 approached the Assistant Registrar by filing an application under Section 23(2) of the said Act aggrieved by the decision of the Society refusing her membership. Though there have been certain rounds of litigation, suffice it to observe that pursuant to the remand by the Joint Registrar, the matter was reconsidered by the Assistant Registrar. The Petitioner - Society received the Respondent No.1's application for membership on 16/01/2021. Accordingly, an application was made by the Petitioner - Society on 27/01/2021 before the Assistant Registrar contending that in terms of Section 22 of the said Act, the period of 3 months be provided to the Respondent to respond to the application for admitting Respondent No.1 as a member of the Society. It is therefore submitted that application under Section 23(2) filed by the applicant is premature.

4. The Assistant Registrar without a decision on the said application proceeded to decide the Appeal No. 20 of 2021 filed by the Respondent No.1 and held that Respondent No.1 be made

a member of the Petitioner - Society. The order is confirmed by Divisional Joint Registrar in a Revision filed under Section 154 of the said Act.

5. There is some debate between the parties whether members of the building F and G can become members of the Petitioner - Society in view of the various documents produced on record. It is the contention of the learned Counsel for the Respondent that having made an application for membership on the previous occasion on 17/07/2018, postal delivery report of which records that packet has been returned unclaimed, would entitle Respondent No.1 to a membership as the same would amount refusal of the membership. Learned Counsel for Respondent No.1 therefore supported the impugned order.

6. The application made by the Petitioner before the Assistant Registrar reveals that the application for membership of the Respondent No.1 is received by the Petitioner on 16/01/2021 i.e. after remand of the matter by the Divisional Joint Registrar to the Assistant Registrar and during pendency of the matter before the Assistant Registrar. In this view of the matter, It was for the Society to first take a decision on the application within the time

provided by the provisions of the said Act. Even if the proceedings filed by Respondent No.1 is to be regarded as one under Section 23(2) of the said Act, Section 23(1A) provides time period of 60 days to communicate the decision from the date of receipt of the said application by the Society. The application has been received by the Society on 16/01/2021 whereas the order is passed by the Assistant Registrar on 15/02/2021. In my opinion, till the period of 60 days contemplated under Section 23(1A) is over from the date of receipt of the application, the Assistant Registrar in the present facts could not have proceeded to decide the Appeal. Contentious issues are raised by the Petitioner - Society that in respect of building F and G, separate Society will have to be formed and flat purchasers there in cannot claim membership in the Petitioner - Society. No doubt, learned Counsel for the Respondent No.1 disputes this position and claims that there is general body resolution of the Society on the basis of which Respondent No.1 can claim membership in the Petitioner - Society. Keeping all contentions open, in the first instance to enable the Society to take a decision on the application made by the Respondent No.1 received by the Society on 16/01/2021, the impugned orders are set aside. It is open for the Respondent No.1 to resort to appropriate remedy after decision on the application if membership is refused.

Learned Counsel for the Petitioner on instructions submits that within a period of 60 days from today, application for membership of the Respondent received on 16/01/2021 will be decided by the Petitioner - Society. It is open for the Respondent No.1 to take appropriate recourse under the provisions of the said Act, in case any adverse order is passed by the Petitioner - Society or no decision is communicated. All contentions are kept open. Petition is disposed of.

(M.S.KARNIK, J.)