

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3991 OF 2021**

Oscar Co-operative Housing Society Limited and ors.	.. Petitioners
vs.	
Kaushik Sehgal and ors.	.. Respondents

Mr. Girish S. Godbole I/b. Mr. Shivraj Patne and Mr. Rahul Soman for the Petitioners.

Komal Kandharkar for the Respondent No.1.

Mr. P.P. Pujari, AGP for the State.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 10, 2021

P.C.

Heard learned counsel for the parties.

2. The order under challenge is passed by the Divisional Joint Registrar under Section 154 of the Maharashtra Co-operative Societies Act, 1960 ('the said Act' for short) granting interim reliefs in favour of the Respondent No.1 in terms of prayer clause (a) till the next date of hearing. Briefly stated the Respondent No.1 is a Member of the Petitioner-Co-operative Society. It is the contention of Respondent No.1 that the elections of the Society to the Managing Committee could not be held for one or other reason and the present body which represents the Petitioner has no authority to take any decision concerning redevelopment of the Society as it

is not a duly elected body. Accordingly, the complaint came to be made by the Respondent No.1 to the Deputy Registrar on 19.04.2021 praying that the interim committee pending the elections be appointed on the said Society. An interim relief was prayed that till disposal of the complaint, the Petitioner-Society be restrained from taking any decisions or holding any general body meetings with regard to redevelopment or any business other than day to day business of the said Society.

3. On 05.05.2021 the Deputy Registrar, Co-operative Societies directed that the documents which the Respondent No.1 wanted be supplied to him.

4. Aggrieved by the order of the Deputy Registrar, the Revision came to be filed under Section 154 of the said Act. The Revisional Authority granted interim reliefs in terms of prayer clause (a) which reads thus :-

“(a) That this Hon’ble Forum be pleased to restrain the Respondents, its officers, committee members, servants, representatives, agents, and/or any person/s claiming through them from taking any action in pursuance to the redevelopment and any decisions other than day to day running of the Respondent Society pending the hearing and final disposal of this Revision Application.”

5. It is the contention of Mr. Godbole that the Petitioner-Society comprises of 23 members. According to him, the Respondent No.1

is not opposing redevelopment but is essentially aggrieved by the failure of the Petitioners from taking any steps in holding elections of the Managing Committee. Even learned counsel for the Respondent No.1 submits that she is not opposed the redevelopment. According to her, no decision for redevelopment can be taken by the Petitioners who have no authority to do so and it is only the properly constituted Managing Committee after the elections are held that can take these decisions.

6. Mr. Godbole, learned counsel submitted that the drastic order restraining the majority of the members from proceeding with the redevelopment cannot be passed by the Divisional Joint Registrar and in any case, he has no jurisdiction to do so, as the same does not touch the business of the Society. According to him, it is only the competent Civil Court which can grant an injunction restraining the redevelopment. Learned counsel for the Petitioners relied upon the decision of the Hon'ble Supreme Court in the case of **Margaret Almeida and others Vs. Bombay Catholic Cooperative Housing Society Limited and others**¹.

7. Learned counsel for the Respondent No.1 supported the impugned order. According to her, Respondent No.1 is not against the redevelopment but is aggrieved by the Petitioners' taking a decision arbitrarily in the absence of there being duly elected body

¹ (2013) 6 SCC 538

in accordance with the relevant provisions of the said Act and the Government Resolutions.

8. I have heard learned counsel. The building is in dilapidated condition. Even the Respondent No.1 is not opposing the redevelopment. The objection is that the Petitioners have no authority to go ahead with the development as they are not duly elected Managing Committee members. From the record it appears that majority of the members wanted to go ahead with the redevelopment as the building is in dilapidated condition. According to learned counsel for the Petitioners, it is the only Respondent No.1 who is opposing the redevelopment, whereas according to learned counsel for the Respondent No.1 there are four members opposing the redevelopment. In any case it is obvious that large majority of members want the redevelopment and for which purpose two special general meetings are held in which the decision for redevelopment of the Society is taken. Even the Respondent No.1 participated in the meeting but was opposed to the Petitioners carrying out the redevelopment. In these facts, in my opinion, considering the dilapidated condition of the building and as the large majority of the members wanted redevelopment of the building, the Divisional Joint Registrar should not have granted the interim injunction restraining the redevelopment process. It is open for the Divisional Joint Registrar to pass appropriate orders on the Revision which is pending before him in

accordance with law on its merits but the interim order of the present nature was uncalled for.

9. I am informed that the complaint dated 19.04.2021 made on behalf of the Respondent No.1 was heard by the Deputy Registrar on 22.06.2021 and final orders are likely to be passed. It is open for the Deputy Registrar to proceed with the complaint on its own merits and pass appropriate orders. However, so far as the impugned order is concerned, the same deserves to be interfered with and is accordingly set aside. The Revision may be decided on its own merits and in accordance with law.

10. The Writ Petition is disposed of.

(M.S.KARNIK, J.)

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signed by
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BHOGALE
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