

psv/pvr

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5279 OF 2021

M/s.Parshwanath Realty

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr.Prasad Dani, Senior Advocate with Mr.Amogh Karandikar, Mr.Rakesh Pathak and Mr.Rajdeep Gude for Petitioner.

Mr.S.D. Rayrikar, AGP for the State.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 14, 2021

JUDGMENT:

1. The petitioner's challenge in this petition is to an order dated 23 August, 2021 passed by the Divisional Joint Registrar Co-operative Societies, Pune Division, Pune (for short, "the revisional authority"). By the impugned order, the revisional authority has allowed an application filed by respondent no.5-Lohegaon No.II Co-operative Housing Society Ltd. (for short, "the **society**") praying for condonation of delay in filing a revision application against an order dated 19 July 2019 passed by the Deputy Registrar, Co-operative Societies, Pune City (5) issuing a "No Objection Certificate (NOC) in favour of the petitioner to undertake construction of a multistorey building on plots no.24, 25, 26 which are plots belonging to the society. The petitioner's application raising an objection to the maintainability of the delay

condonation application also stands rejected by the impugned order.

2. The petitioner claims to be a member of the society having acquired ownership of three plots being Plot Nos.24 to 26 on Survey No.208/1/1 admeasuring 309.37 sq.meters, 322.50 sq.meters, 369.75 sq.meters respectively totalling to 1001.62 sq.meters situated at Lohagaon, Pune. The plots in question are stated to be acquired by the petitioner from one M/s. Boyatkar Realities Pvt. Ltd. under a Deed of Assignment dated 31 July 2015 executed in its favour. The plots, being part and parcel of the Society's plots, any development to be undertaken by any member would require an approval from the Society.

3. It appears to be not in dispute that earlier an "Administrator" was appointed for the said society by an order dated 15 February 2010 passed by the Deputy Registrar. The administrator so appointed strangely issued a No Objection dated 19 March 2014 in favour of Shri. Vikas Manilal Boyatkar (M/s.Boyatkar Realities Pvt.Ltd.) to put up a construction on plot no.24 with the specific and peculiar clause that in the construction which would be carried out by virtue of the said NOC, if any legal issues arise or complaints are filed, it shall be the entire responsibility of Shri. Vikas Manilal Boyatkar. Most pertinently the NOC was in respect of only one plot namely plot no.24.

4. As the Pune Municipal Corporation (PMC) insisted for a NOC to be obtained from the Deputy Registrar Co-operative Societies or in other words, the PMC not accepting the Administrator's NOC, the petitioner approached the Deputy Registrar, Co-operative Societies by making an application on 4 July 2019 for grant of a NOC by the Deputy Registrar to undertake construction on the said three plot nos.24, 25 and 26. On such application of the petitioner, the Deputy Registrar passed an order dated 19 July 2019 and granted NOC in question, inter alia recording that the petitioner had represented that earlier a NOC was granted to undertake construction on these three plots by the administrator on 19 July 2014 (when actually the NOC was in respect of plot no.24 only).

5. It needs to be noted that respondent no.4 Subhash Ratnachand Desarda, an independent member of the society had filed a revision application before the Divisional Joint Registrar (Revision Application no.107 of 2020) challenging the NOC dated 19 July, 2019 granted by the Deputy Registrar in favour of the petitioner. However, the said revision was filed with some delay, hence an application for condonation of delay was filed by respondent no. 4 in the said revision application. By an order dated 4 September, 2020 passed by the Divisional Joint Registrar, such application for

condonation of delay was allowed as also the application as filed on behalf of the petitioner challenging the locus of respondent no. 4 in filing the Revision Application was also rejected. Being aggrieved by the said order dated 4 September, 2020, the petitioner approached this Court in Writ Petition (St.) No. 92742 of 2020. The said Writ Petition was disposed of by the learned Single Judge of this Court (Coram : Smt. Anuja Prabhudessai, J.) by an order dated 10 November, 2020. The relevance of the order in the present proceedings is in regard to the observations made by the Court in respect of respondent no. 5-Society being a necessary party to the said revision proceedings before the Divisional Joint Registrar wherein respondent no. 2-Divisional Joint Registrar, Cooperative Societies had held that the Society was a necessary party. This Court in paragraph 9 of the said order made an observation that subsequent to the order impugned therein, an application was filed for impleading respondent no. 5-Society as a party respondent. The Court observed that in the facts of the case, it would be just and proper to hear the Society and decide the matter afresh. The petition was accordingly allowed by setting aside the impugned order challenged therein and the matter was remitted to the Divisional Joint Registrar, Cooperative Societies, Pune Division with a direction to decide the proceedings afresh, after hearing the concerned parties, including the Society. It would be appropriate to note the said order, which reads thus:

“1. The challenge in this petition, filed under Article 227 of the Constitution of India, 1950, is to the Order dated 4.9.2020 passed by the Respondent No.2- Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune. By the impugned order the Respondent No.2 has allowed the application for condonation of delay filed by the Respondent No.4, and has dismissed the application filed by the Petitioner challenging the locus of the Respondent no.4 in filing the revision application.

2. Heard Shri Dani, learned Sr. Counsel for the Petitioner and Dr. Milind Sathe, learned Sr. Counsel for the Respondent No.4. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

3. The dispute pertains to the NOC dated 19.7.2019 issued by the Sub-Registrar of the Co-operative Societies for construction of residential bungalow in plot nos.24, 25 and 26 under Survey No.208/1/1 of Village Lohagaon, Pune. The said plots, which form part and parcel of Lohagaon II Co-operative Housing Society, were allotted to Susheela Talera and Harshad Talera. The share certificates in respect of the said plots were subsequently transferred in favour of Kailash Boyatkar for M/s. Boyatkar Realities Pvt. Ltd. The Petitioner had initially entered into a development agreement and later acquired absolute ownership right in respect of the subject plots by virtue of Deed of Assignment and transfer dated 31.7.2015 executed in its favour by M/s. Boyatkar Realities Pvt. Ltd.

4. The erstwhile owner M/s. Boyatkar Realities had obtained NOC dated 19.3.2014 from the Administrator of the society and commencement certificate (revised) from Pune Municipal Corporation for construction of residential bungalow in the said plots. The Petitioner claims that after completing construction of the 2.5 floors, it had submitted a plan for 2 and half additional floors. The said plan was sanctioned by BMC vide commencement certificate dated 6.5.2019 and the Petitioner was subsequently called upon to submit a fresh NOC from the society. The petitioner claims that the Adhoc Committee had failed to issue the certificate despite directions, and as such the Sub-Registrar of Cooperative Societies had issued a updated certificate dated 19.7.2019.

5. The Respondent No.4, challenged the updated NOC dated 19.7.2019 in Revision Application No.107 of 2020, which was filed with application for condonation of delay. The cause for the delay, as stated in the application, was that his request for revocation of NOC was pending before the Sub-Registrar despite continuous follow up, and secondly that he was unable to file revision in prescribed time in view of the lockdown declared due to COVID 19 pandemic.

6. The Petitioner contested the said application and also challenged

the locus of Respondent No.4 in filing the revision application on the ground that Respondent No. 4 was not a member of the Society. It was alleged that the Society was a necessary party . The Petitioner had also relied upon the order of the Civil Court dismissing the application for intervention filed by Respondent No.4 in Civil Suit No. 1631 of 2019.

7. By the impugned order, the Respondent No.2 has condoned the delay holding that the application for revocation of NOC, filed by Respondent No.4 was pending before the Sub Registrar and secondly in view of lock down declared due to COVID 19 pandemic. while dismissing the application filed by the Petitioner challenging the locus of the Respondent No.4, the Respondent No.2 has observed that NOC has been issued without "taking into consideration the applicant and the society" .

8. It is pertinent to note that the Petitioner had filed a civil suit challenging stop work notice issued by Pune Municipal Corporation in respect of the construction in the subject plot. The Respondent No.4 had filed an application for intervention in the said suit. While dismissing the said application, the Civil Court has doubted the genuineness of the share certificate produced by the Respondent No.4. The Civil Court has also taken note of the fact that Respondent No.4 has transferred right in favour of Lunkard Reality and has thus held that Respondent No.4 has no locus standi. The Respondent No.2 has not referred to this order while considering the locus of Respondent No.4 in challenging the NOC. It is also pertinent to note that Respondent No.4 has ventured in the merits of the matter while observing that NOC has been issued without hearing the applicant and the Society. Strangely, despite such observation, Respondent No.2 has held that Society is not a necessary party. Respondent No.2 has also not dealt with the question whether Respondent No.4 is a member of the Society and whether he had locus to challenge the NOC in his individual capacity. A question also arises whether the lockdown declared in March 2020 would constitute 'sufficient cause' for not challenging the NOC issued in July 2019. Though Dr. Sathe, Id. Sr. Counsel for Respondent No.4 has strenuously tried to justify the delay , there is no mention of such grounds/cause in the impugned order. The order is cryptic and non-speaking and hence cannot be sustained.

9. In the course of the hearing it has been stated that subsequent to the order, an application has been filed for impleading the society as party respondent. Since questions have been raised about the membership of Respondent No.4 and the genuineness of the share certificate produced by Respondent No.4, it would be just and proper to hear the Society and decide the matter afresh.

10. Under the circumstances, the Petition is allowed. The impugned

order is set aside. The matter is remitted to the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune, with direction to decide the matter afresh after hearing the concerned parties, including the Society.

11. The parties are directed to appear before the Respondent No.2 on 28.11.2020.

12. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production, by FAX or E-Mail of a digitally signed copy of this order.”

(emphasis added)

6. It so transpired that the said revision application filed by respondent no. 4 Subhash Ratnachand Desarda was scheduled to be listed for hearing on 21 July, 2021. However, before the scheduled date of listing of the said proceedings before the Divisional Joint Registrar, respondent no. 4-Subhash Desarda has said that he was coerced by the petitioner to withdraw his revision application. Respondent no. 4-Subhash Ratnachand Desarda withdrew the said revision application on 30 June, 2021 which was much prior to the returnable date of the hearing, which was 21 July, 2021. Respondent no. 5-Society was not aware of the said withdrawal, which came to its knowledge much subsequently when the proceedings of another Writ Petition (St.) No. 92742 of 2020 filed by the petitioner was listed before this Court, which was withdrawn by the petitioner in view of respondent no. 4 withdrawing the revision proceedings before the Divisional Joint Registrar.

7. In the above circumstances, respondent no. 5-Society contended that it was appropriate for the Society to file its own independent revision

application assailing the NOC granted by the Deputy Registrar dated 19 July, 2019. In these circumstances there was a delay on the part of respondent no. 5-Society in filing the revision application. Accordingly, an application came to be moved before the Divisional Joint Registrar to condone delay in filing the revision application, against the said order passed by the Deputy Registrar dated 19 July, 2019 granting NOC in favour of the petitioner. By the impugned order, the Society's application has been allowed by the Divisional Joint Registrar. Hence, aggrieved by such order, the petitioner has filed the present petition.

8. Mr.Dani, learned senior counsel for the petitioner would submit that the impugned order deserves to be set aside for the reason that there was previous proceeding of a revision filed by a member of the Society-Subhash Ratanchand Desarda being Revision Application No.107 of 2020 before the Divisional Joint Registrar, challenging the very NOCs dated 19 March 2014 which was granted by the Administrator of respondent no.5-society as also the NOC thereafter granted on 19 July 2019 by the Deputy Registrar, Co-operative Societies, Pune City-5, granting development permission. Mr.Dani has contended that such revision was later on withdrawn by Mr.Desarda. It is hence his contention that a second revision filed at the behest of respondent no.5-society was not maintainable. Mr.Dani, submits that the relevance of the

earlier proceedings was significant as it could be seen that respondent no.5-society was well aware of such revision application and the cause of action which was similar, being pursued by Mr.Subhash Ratanchand Desarda. Mr.Dani's contention is that once the society was aware about such cause of action being pursued by Mr.Desarda, it was necessary for the Divisional Joint Registrar to consider that such knowledge would amount to respondent no.5-Society giving up its rights to challenge the NOCs. It is hence Mr.Dani's submission that again a revision at the behest of the society could not have been filed and hence, the delay condonation application as filed by the Society ought to have been rejected. There are the only contention which was canvassed by Mr. Dani.

9. Having heard Mr. Dani and the learned AGP and having perused the record, I am not persuaded to accept any of the submission as urged by Mr. Dani. At the outset it needs to be noted that *per se* the earlier revision application filed by Mr.Subhash Ratanchand Desarda and its withdrawal by him would certainly not amount to any bar or any *res judicata* against the society which has filed its independent revision application and in so filing it sought condonation of delay. It cannot be countenanced that when for the valuable land of the society, when the construction NOC was not granted by the society but by the Administrator and subsequently by the Deputy

Registrar, the Society would remain a mute spectator in this situation. In my opinion *per se* a cause of action had arisen in favour of the society to challenge such NOC in the revision proceedings in question filed by the society before the Divisional Joint Registrar assailing such NOCs. There was nothing wrong in the society doing so considering the circumstances prevailing at the relevant time which possibly delayed filing of such revision by the Society. The circumstances are quite pertinent to bring about an uncertainty in the society taking up such position, with some delay, namely, earlier an administrator having been appointed, who issued a NOC in petitioner's favour and subsequently the Deputy Registrar who possibly stepped into the shoes of the Society also issuing a NOC. The most significant question was as to whether the Deputy Registrar would have any authority and jurisdiction to issue NOC was one of the vital issue which were raised by the Society.

10. There would also be nothing wrong for the Society to have a bonafide impression that one of its members, namely, Mr. Subhash Desarda had already assailed such action on the part of the Deputy Registrar in issuing NOC dated 19 July, 2019 more particularly when this Court in its order dated 10 November, 2020 passed in Writ Petition (St.) No. 92742 of 2020 filed by the petitioner had recognized the need of the Society to be part of the

proceedings initiated by Mr. Subhash Desarda, before the Divisional Joint Registrar. However, before such proceedings could be taken to their logical conclusion, Mr. Desarda withdrew the said proceedings and certainly not on his own volition and/or free will as stated by him.

11. Thus, Mr. Dani's contention that the society was aware about the proceedings filed by Mr. Subhash Desarda, in my opinion, would not assist the petitioner, in any manner whatsoever. This also for the reason that the record indicates that initially when Mr. Subhash Desarda filed a revision application, the society was not made a party, only the Divisional Joint Registrar, Co-operative Societies, Pune City-V and M/s. Parshwanath Realty (petitioner) were the parties. This was possibly for the reason that at the relevant time the society was under an administrator. However, later on after the administrator came to be removed, the society being the custodian of all the plots qua its members, unquestionably had an inextricable interest and entitlement to question any actions which were taken by the administrator and/or for that matter the Deputy Registrar of the Co-operative Societies, on any application as filed by the petitioner, who admittedly was not granted a NOC by the society. Such NOC which was granted by the administrator can never be said to be an NOC granted under a collective will of the society, which only the managing committee of the society, if necessary, with consultation if so

necessary, of the general body could have granted. In any event at the relevant time the society was not represented before the Deputy Registrar, as the administrator was in-charge of the society. Hence, the order dated 19 July 2019 passed by the Deputy Registrar granting a NOC in favour of the petitioner, certainly was not an order passed after hearing the society. Once the development is being undertaken in relation to any of the plots of the society, the society would certainly have an entitlement and/or a say in respect of such development, to foresee that the development is in consonance with the rules and regulations of the Society. Hence, it was appropriate for the society to file a revision assailing any such action which was affecting the rights and affairs of the society and in the present case issuance of such NOC by the administrator or by the Deputy Registrar, in asserting that the same is not in accordance with the rules and regulations or under law.

12. In my opinion, the challenge as mounted by respondent no.4 Mr.Subhash Desarda to the NOC dated 19 March 2019 as issued by the administrator and the NOC granted by the Deputy Registrar dated 19 July 2019 can by no stretch of imagination, would be any proceedings by or on behalf of the society and hence as noted above, even if a position was taken by the society that there is already a challenge as raised by one of its

members to the NOC granted by the administrator or for that matter by the Deputy Registrar, it would not dissuade the society from asserting its independent rights. Thus, respondent no.4 Subhash Desarda having withdrawn his revision application against grant of NOC in favour of the petitioner, certainly would not bar the society to assert its distinct rights against such action of the Deputy Registrar. In any event, Mr. Desarda's proceedings as noted above cannot be said to be proceedings between the petitioner and the society. Further more, it cannot be overlooked that respondent no.4 Mr.Subhash Desarda was on record before the Divisional Joint Registrar to state that the petitioner had in fact pressurized, tricked and deceived respondent no.4 to withdraw the revision application filed by him. To such effect respondent no.4 has also submitted an affidavit dated 12 July 2021 before the Divisional Joint Registrar and stated that the delay in filing of the revision application by the society be condoned.

13. The Divisional Joint Registrar has also considered the fact, that the no objection, which was issued by the Deputy Registrar in favour of the petitioner was unilateral and that on respondent no.4 Subhash Desarda having filed a revision application (Revision Application no.191 of 2020) before the Revisionary Authority alongwith the delay condonation application no.107 of 2020, the NOC granted by the Deputy Registrar dated 19 July 2019

was stayed by the Divisional Joint Registrar in such proceedings. This stay was obviously hurting the petitioner. It thus appears that the petitioner in collusion with the respondent no.4 Subhash Desarda much before the returnable date of the revision proceedings that is on 21 July 2021, on 30 June 2021 had requested the Divisional Joint Registrar to take the Revision Application on record for its withdrawal and accordingly the said revision application filed by respondent no.4 Subhash Desarda was withdrawn in the absence of the society and/or any knowledge to the society. This was despite the fact that this Court had permitted the society to be impleaded as a party to the revision proceedings filed by respondent no.4 Subhash Desarda. The Divisional Joint Registrar in the impugned order has observed that respondent no.4 was pressurised by the petitioner to withdraw the said revision application. In any event the society was directed to be impleaded as a party which also brought about a situation that the society was not precluded from assailing the unilateral NOC granted by the Deputy Registrar in favour of the petitioner.

14. In the above circumstances, the Divisional Joint Registrar has rightly allowed the delay condonation application filed by the society in filing revision application assailing the unilateral NOC granted by the Deputy Registrar, as also has rejected the petitioner's objection to the maintainability

of the revision application filed by the petitioner. All these circumstances are quite serious and they have been rightly appreciated by the Divisional Joint Registrar. There is no perversity in the approach of the Divisional Joint Registrar in passing the impugned order. In fact, if the Divisional Joint Registrar was not to pass the impugned order, grave and irreparable prejudice would have been caused to the petitioner.

15. The writ petition does not warrant interference in the exercise of the jurisdiction of this Court under Article 226 of the Constitution of India, however keeping open all contentions of the parties in the pending revision proceedings. The petition is accordingly rejected. No costs.

(G. S. KULKARNI, J.)