

Bhogale

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

WRIT PETITION NO. 9275 OF 2019

Om Trimurti Co-operative Housing Society Ltd. .. Petitioner
vs.

State of Maharashtra & ors. .. Respondents

Mr. J.S. Kini I/b. Ms. Sapna Krishnappa for the Petitioner.

Mr. Kunal Chaudhary for Respondent No.5.

Mr. Anil Dubey for Respondent No.6.

Mrs. V.S. Nimbalkar, AGP for the State/Respondent Nos.1 to 3.

CORAM : M.S.KARNIK, J.

DATE : FEBRUARY 16, 2021

P.C.:-

Heard learned counsel for the parties.

2. Mr. Kini, learned counsel appearing for the Petitioner assails the order passed by the Divisional Joint Registrar dismissing the Revision filed by the Society under Section 154 of the Maharashtra Co-operative Societies Act, 1960 ('the said Act' for short). He submitted that the Petitioner-Society originally comprised a building of ground + 4 structure having 90 members. The said building is now 50 years old. He says that adjacent to the Society there was an open plot of land. The Society entered into an agreement with the developer and

constructed 'ground + 7' tower (hereinafter referred to as the 'Tower' for short) on the vacant portion. So far as this tower is concerned the developer entered into the agreement with the 47 flat purchasers. The Respondent No.5 is one such flat purchaser in respect of a flat in the said tower. The flat purchasers are in occupation of their units for last more than 15 years.

3. It is the contention of Mr. Kini that Petitioner-Society has no concern with the said tower as almost 46 occupants of the said tower except the Respondent No.5, have never applied for membership to the Petitioner-Society and there is ad-hoc committee in existence which is looking after the affairs of the said tower. Learned counsel pointed out that it is only the Respondent No.5 who insists to be made a member of the Petitioner-Society. Mr. Kini submits that admitting the Respondent as a member would create a lot of complications in the smooth functioning of the Petitioner-Society as the Society has no concern with the affairs of the tower which is functioning as an independent entity. Mr. Kini submitted that the other 46 members of the Tower are not willing to become members of the Petitioner-Society.

4. I have gone through the impugned orders. There is no dispute that the Tower was constructed pursuant to the development agreement dated 17.11.1999 entered into by the Society with the developer. The developer sold one of the flat to the Respondent. The development agreement was entered into between the Society and the developer. It is now the contention of the Petitioner-Society that they have no concern with this tower as the ad-hoc committee is managing the affairs of the said tower independently.

5. At this juncture it is pertinent to reproduce Clause 2(e) of the registered agreement dated 17.11.1999 between the Petitioner-Society and the developer. The same reads thus :-

“2(e) That they undertake that each of the person of whom the constructed portion or any part thereof available to the Builders/ Developers is sold, shall become a member of the society, and that such person on admission as a member of the society shall pay a sum of Rs.25,000/- (Rupees Twenty five thousand only) towards contribution and in addition the persons to be admitted as member of the society shall pay a sum of Rs.261/- towards share money, entrance fee and membership fees and such other charges/fees/cess as may be prescribed under Maharashtra Co.Op.Soc. Act, 1960.”

6. It is the case of the Petitioner-Society that the developer has failed to comply with the terms and conditions of the

agreement dated 17.11.1999. Respondent No.1 has been put in possession of his flat pursuant to the agreement entered into between the Respondent No.1 and the developer on the basis of agreement dated 17.11.1999.

7. Considering that the application was made by the Petitioner under Section 22 of the said Act for membership and Respondent No.5 complied with the conditions mentioned therein, the Deputy Registrar allowed the application under Section 22 of the said Act and directed the Petitioner-Society to admit the Respondent as a member. Even the Tower is standing on the land belonging to the Petitioner-Society which was constructed pursuant to the development agreement entered into between the Petitioner-Society and the developer. Having gone through the orders passed by the authorities below it cannot be said that there is any perversity with the view taken by the authorities below while allowing the application of Respondent No.5 for enrollment as a member. Moreover, it is seen that the Petitioner-Society has dispute with the developer on account of alleged breach of the terms and conditions of the development agreement. It has rightly been observed by the authorities below that this cannot be a reason to deprive of the

Respondent of the membership if otherwise he is entitled for the same in accordance with Section 22 of the said Act.

8. So far as an apprehension of Mr. Kini that there will arise serious complications if the Respondent is admitted as a member, it is always open for the Petitioner-Society to resort to such appropriate remedies and proceedings in case it is their stand that the Tower is an independent unit with which the Petitioner-Society has no concern. The issue of membership will obviously be subject to the outcome of appropriate proceedings if resorted to by the Petitioner.

9. Subject to these observations the Writ Petition is rejected.

10. A request is made by the learned counsel for the Petitioner for stay of this order. Considering that the Respondent has first made an application for membership almost 10 years ago, the request is refused.

(M.S.KARNIK, J.)