

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

WRIT PETITION NO. 1617 OF 2021

Viva Hall Mark 'E' Wing Cooperative
Housing Society Ltd. (Proposed) through
its Chief Promoter Mr. Niraj Rajput ...Petitioner
V/s.
The State of Maharashtra and Ors. ...Respondents

Mr. Rajesh Jain a/w. Mr. Rohit Jain i/b. Legal Juris, for the
Petitioner.
Mr. S. D. Rayrikar, AGP for the Respondent Nos.1, 3 and 4 /
State.
Ms. Wati Sagvekar, for the Respondent No.2.

**CORAM : C.V. BHADANG, J.
DATE : 19 OCTOBER 2022**

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Judgment :

. Rule made returnable forthwith. The learned counsel for the Respondents waive service. Heard finally by consent of parties.

2. The Petitioner Viva Hall Mark 'E' Wing Co-operative Housing Society Ltd. (Proposed) through its Chief Promoter Mr. Niraj Rajput had filed an application under Section 10(1) of the Maharashtra Co-operative Societies Act, 1960 for registration of

the society comprising of the members / flat purchasers in Building 'E' in respect of which construction is admittedly complete.

3. The District Deputy Registrar Pune (Rural) (DDR) by an order dated 20 August 2016 passed in Application No.7/2016 has rejected the application, interalia placing reliance on Clause 19 of the agreements executed between the second Respondent – Developer and Builder and the members of the Petitioner – Society.

4. Feeling aggrieved, the Petitioner challenged the same before the Divisional Joint Registrar of Cooperative Societies Pune in Revision Application No.271/2016. The Divisional Joint Registrar has rejected the revision application by order dated 6/7 June 2019 thereby confirming the order dated 20 August 2016 passed by the DDR Pune. Hence, this petition.

5. I have heard the learned counsel for the parties. Perused record.

6. The learned counsel for the Petitioner has submitted that the construction of all the five buildings namely Building A to E of Phase I is complete and the declaration to that effect is furnished by the Respondent – M/s. Viva Swaraj to the Competent Authority under the Maharashtra Real Estate

Regulatory Authority Act 2017, on 27 July 2017. He submits that there are only five buildings, which are proposed to be constructed as per building plan. This aspect is disputed on behalf of the second Respondent stating that there are nine buildings of which four are yet to be completed and that construction has been stalled pending the obtaining of an environmental clearance.

7. The learned counsel for the Petitioner has placed reliance on the decision of this Court in (i) *Sukhsagar Co-operative Housing Society Ltd. and Anr. Vs. State of Maharashtra and Ors.*¹, (ii) *Padmavati Construction Co. and Ors. Vs. State of Maharashtra and Anr.*², (iii) *M/s. Noopur Developers Vs. Himanshu V. Ganatra and Ors.*³, (iv) *Om Sai Pratibha Co-op. Hsg. Soc. Vs. State of Maharashtra and Ors.*⁴, (v) *Ratna Rupal Co-operative Housing Society Ltd. Vs. Rupal Builders and Ors.*⁵ and (vi) *Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan*⁶ in order to submit that the Competent Authority namely the DDR has only to look into the compliance of Section 8 and 9 of the 1960 Act. Therefore, reliance placed by the authorities below on Clause 19 of the agreement, in refusing

¹2004(3) Mh.L.J. 1010

²2007(1) Bom.C.R. 609

³2010(2) ALL MR 791

⁴2002(5) Bom.C.R. 177

⁵2011(5) Bom.C.R. 561

⁶AIR 2019 SC 1779

to register the society is unwarranted. He submits that even otherwise the construction of all the buildings in Phase I as per the sanctioned plan is complete and therefore, it was the responsibility of the Respondent No.2 to form the society.

8. The learned counsel for the Respondent No.2 has pointed out that a similar issue about registration of a society relating to Building No.A and B is pending before Divisional Joint Registrar. She has pointed out the order dated 10 October 2022 passed by this Court in Writ Petition No.11685/2017 by which the delay in filing the said revision has been condoned and the revision application has been expedited to be decided within a period of three months from the date of the appearance of the parties.

9. I have considered the submissions made.

10. It appears that the decisions on which reliance is sought to be placed on behalf of the Petitioner were not brought to the notice of the Divisional Joint Registrar. It can also be seen that similar issue about the registration of the society in respect of Building No.A and B is pending before the Divisional Joint Registrar. Thus, in my considered view, it would be appropriate if the Divisional Joint Registrar decides the revision application afresh and in accordance with law. The parties will have the benefit of bringing to the notice of the Divisional Joint Registrar subsequent developments, if any and the decisions on which

reliance is sought to be placed on behalf of the Petitioner.

11. In that view of the matter, the petition is partly allowed. The impugned order dated 6/7 June 2019 passed by the Divisional Joint Registrar Pune is hereby set aside. Revision Application No.271/2016 is hereby restored to the file of Divisional Joint Registrar for disposal, according to law. The parties to appear before the Divisional Joint Registrar on 14 November 2022. The parties will be at liberty to produce additional documents, if any, before the Divisional Joint Registrar within one week from the date of appearance. The Divisional Joint Registrar shall proceed to hear the revision application as expeditiously as possible and the same shall be decided within a period of three months from the date of appearance of the parties. Rival contentions of the parties, on merits, are left open. Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.