

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2022.08.20
11:47:48 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9183 OF 2021**

Shri Jeetendra Balkrishna Dhumale and Ors. Petitioners.

V/s

The State of Maharashtra and Ors. Respondents.

Mr. Amit A. Karande for the Petitioners.

Mr. P.P. Pujari, AGP for Respondent Nos.1 to 3.

Mr. J.R. Prajapati for Respondent No.4.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 18, 2022

P.C.:-

1] Heard respective Counsel.

2] Pursuant to the complaint lodged by Respondent No.4 in exercise of powers under Section 79A(3)(b) of the Maharashtra Co-operative Societies Act (hereinafter referred to for the sake of brevity as “the Act”), Petitioners suffered order of disqualification for a period of six years. The said order of disqualification is based on two grounds viz (a) that Resolution passed in the Annual General Body Meeting of the Society as regards allotment of Flat by rotation was not adhered to and there were irregularities in such meetings and (b) the

Circular which governs such allotment being Circular dated 03/01/2009 was also not adhered to.

3] It appears that aforesaid order of disqualification was confirmed in Revision preferred by the Petitioners under Section 154 of the Act, by the Divisional Joint Registrar. As such, this Petition.

4] Counsel for the Petitioners would urge that the alleged complaint and order of disqualification under the aforesaid provisions are based on twisted factual matrix viz. claim of Respondent No.4 for allotment of flats on the same floor, as after allotment by rotation, Respondent No.4 was allotted Flats on 11th and 12th floor each respectively. According to Counsel for the Petitioners, allotment was in tune with various directions issued by the State Government, particularly Circular dated 03/01/2009.

5] While countering aforesaid submissions, Counsel for Respondent No.4, so also learned AGP appearing for Respondent Nos. 1 to 3 would support the orders impugned. According to Counsel for Respondent No.4, Petitioners were instrumental in maintaining records of the

Annual General Meeting of the Society in which allotment was finalized. He would further urge that Petitioners have treated other members indifferently, as they being office bearers got allotted flats from sale component whereas claim of Respondent No.4 was not favourably considered for allotment of flats on the same floor.

6] I have appreciated said submissions.

7] Fact remains that allotment of the Flats was decided in accordance with rotation system as provided under Circular of 03/01/2009 referred above. It appears that Petitioners claimed to have drafted Resolution and objections were invited so as to give final shape to the said Resolution and in the said proceedings it appears that Respondent No.4 was allotted one flat each on 11th and 12th floor. Perusal of the Resolution reflects that Flat which was allotted to Respondent No.4 could have been exchanged by him with other members or by paying higher premium to the developer so as to facilitate to have accommodations on the same floor. It appears that such attempt on the part of Respondent No.4 was not fruitful. Fact remains that passing of the Resolution of allotment of Flat is not in

dispute. However, what is claimed is, such Resolution is illegal. Resolution was not challenged before any of the authorities. In the light of aforesaid, what can be noticed is, passing of the Resolution by the Society in the Annual General Body Meeting of allocation of Flats in favour of its members by taking recourse to rotation system is in tune with Government policy. As such, said Resolution prima facie cannot be inferred to be contrary to the very instructions of the State Government, particularly one reflected in the Circular dated 03/01/2009.

8] Apart from above, it cannot be said from the record that Petitioners were instrumental in maintaining parallel records as is claimed by Respondent No.4, particularly when claim as regards adjustment of Flats was very much open for Respondent No.4. Merely because one of the office bearers was accommodated in Flat No.A-2205 as against Flat No. A-105 cannot be the ground for ordering disqualification.

9] As both the orders impugned are contrary to the very scheme of Section 79A(3) of the Act, same are not sustainable and as such are

quashed and set aside.

10] Petition stands allowed in the above terms.

11] However, aforesaid order will not come in the way of Respondent No.4 to approach the developer or Society with a request for consideration of his claim for allocation of Flats on the same floor in case if such occasion so arises.

(NITIN W. SAMBRE, J.)