

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2262 OF 2021**

Alka Agarkar,
Aged : 51 years, Occu.: Service,
Residing at flat No.B-502,
Udaaka CHSL, Building No.57,
Shddharth Nagar, Goregaon (East),
Mumbai-400 104.

.....Petitioner

Vs.

- 1 S. N. Udaaka Co-Operative
Housing Society Limited,
A Co-operative Housing
Society registered under the
Maharashtra Co-operative
Societies Act, 1960 Vide
Registration No. MUM/MHAD/
Housing/TC/12544/2005-2006,
Udaaka CHSL, Building No.57,
Siddharth Nagar, Goregaon (East),
Mumbai-400 104.
- 2 Mr. Sanjay Balunj,
Through the Office of the Deputy
Registrar of Co-operative Housing Society,
Grihnirman Bhavan, Kalanagar,
Bandra (East), Mumbai-400 051.
- 3 Vishwas Pai,
Ex-Secretary, S.N. Udaaka CHSL,
Aged Nil years, Occ.: Service,
Residing At Udaaka CHSL, Flat No.A-801,
Building No.57, Siddharth Nagar,
Goregaon (East),
Mumbai – 400 104.

- 4 Navin Asthana
Ex-Treasurer,
Aged Nil years, Occ.: Service,
Residing At Udaaka CHSL, Flat No.A-1101,
Building No.57, Siddharth Nagar,
Goregaon (East),
Mumbai – 400 104.
- 5 Deputy Registrar of Co-operative
Societies at MHADA,
Grihnirman Bhavan, Kalanagar,
Bandra (East), Mumbai – 400 051.
- 6 Divisional Joint Registrar,
Co-operative Societies,
Mumbai Division, Mumbai.
8th Floor, Malhotra House,
Opp. GPO Fort, Mumbai – 400 001.
- 7 State of Maharashtra,
Through Principal Secretary,
Co-operation Department,
Government of Maharashtra,
Mantralaya, Mumbai – 400 032.Respondents.

Mr. Akash Rebello a/w Nitesh Acharya i/by Fazyan Khan for the Petitioner.
Mr. Manoj Pandit for the Respondent Nos.1, 3 and 4.
Mr. S.D. Rayrikar, AGP for the Respondent Nos.6 and 7.

CORAM : A. S. GADKARI, J.
DATE : 26th APRIL, 2022.

ORAL JUDGMENT:-

Rule. Rule made returnable forthwith. By consent of the learned counsel for the respective parties, Petition is heard finally.

2 Heard Mr. Rebello, learned Advocate appearing for the Petitioner, Mr. Pandit, learned Advocate for the Respondent Nos.1, 3 and 4

and Mr. Rayrikar, learned AGP for the Respondent-State.

3 Petitioner/Member of Respondent No.1-Society has impugned Judgment and Order dated 8th March, 2021 passed in Appeal No.27 of 2020 by the learned Member of Maharashtra State Co-operative Appellate Court, Mumbai, allowing the said Appeal preferred by the Respondent No.1 Society, thereby setting aside Order dated 4th December, 2020 passed by the learned Judge, Co-operative Court No.4, Mumbai, below Exh-5 in Dispute No.550 of 2019 filed by the Petitioner.

4 Record indicates that, Petitioner has filed Dispute No.550 of 2019, for setting aside voter's list and election dated 4th August, 2019 of Respondent No.1-Society and for other consequential reliefs. She had also filed an Application below Exh-5 for interim reliefs. The Trial Court by its Order dated 4th December, 2020 passed below Exh-5 in the said Dispute, allowed the said Application and restrained the Respondent Nos.2 to 6 herein, being newly appointed managing committee members of Respondent No.1-Society, from taking any decision till final disposal of the said Dispute.

In an Appeal preferred by the Respondent No.1-Society, the Appellate Court while allowing the Appeal has reversed the findings recorded by the Trial Court and has set aside the Order dated 4th December, 2020 passed by the Trial Court below Exh-5.

5 Mr. Rebello, learned Advocate for the Petitioner submitted that, by an Order dated 29th September, 2018 passed below Exh-5 in Dispute No.341 of 2018 filed by an other member along with the Petitioner, the Co-operative Court had granted injunction against the newly appointed/inducted members of the Respondent No.1-Society,, *inter-alia* granted temporary stay to the Resolution dated 23rd September, 2017 passed by the Respondent No.1 Society. That, the Appellate Court without considering the said fact has allowed the Appeal, permitting the said persons whose induction in the Respondent No.1-Society has been stayed by the Co-operative Court. He submitted that, the Appellate Court has committed serious error in not considering the said vital aspect of the matter. He therefore prayed that, the impugned Judgment and Order dated 8th March, 2021 passed by the Appellate Court may be quashed and set aside.

6 Per contra, Mr. Pandit, learned Advocate for the Respondent-Society submitted that, the Petitioner a member of the Respondent No.1-Society and was also a member of the erstwhile Managing committee, is opposing the redevelopment of the property of the Respondent No.1-Society. He submitted that, majority of the members of the Society are on one side and few members who were earlier governing Respondent No.1-Society are on the other side, opposing redevelopment. He submitted that, the impugned Judgment and Order passed by the Appellate Court is well

within the conformity of four corners of law and needs no interference by this Court in its jurisdiction under Article 227 of the Constitution of India. He therefore submitted that, the present Petition may be summarily dismissed.

7 Perusal of record indicates that, against a purely interlocutory Order, the present Petition has been preferred by the Petitioner. According to the Petitioner, the other Respondents are not entitled to be members of the Society as of today, as the Resolution dated 23rd September, 2017 granting them membership and inducting them in the Respondent No.1-Society is itself challenged before the Co-operative Court in Dispute No.341 of 2018 and the same is *sub judice*. As a matter of fact and record, the said persons are not yet held to be ineligible to be members of the Respondent No.1-Society and as of today, they are members of the Society. It is the settled position of law that, the Managing Committee of the Respondent No.1-Society under normal circumstances should not be restrained from functioning unless and until their election is set aside by the Court of competent jurisdiction.

8 The Appellate Court has taken into consideration the said vital aspect of the matter while reversing the findings recorded by the Trial Court. It appears to this Court that, the Petitioner for the reasons best known to her, is trying to create hurdles in the smooth functioning of the Respondent No.1-Society, particularly when the majority of the members

are on one side.

9 After perusing entire record, this Court is of the considered view that, the Appellate Court has not committed any error either in law or on facts, while passing the impugned Judgment and Order.

Petition being de hors of merits, is accordingly dismissed.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
SHARNAPPA
MASHALKAR
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