

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5436 OF 2022

Vinod Mangaldas Bhanushali & Anr.Petitioners

V/S

Dy. Registrar, Co-op. Societies, Thane & Ors.Respondents

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Mr. Rahul Soman for the Petitioners.

Mr. N.K. Rajpurohit, AGP for the Respondent Nos.1 and 2-State.

Mr. Shardul Singh a/w Ms. Anisha Nair i/b M/s. Vislegis Law Practice for
Respondent No.3-Society.

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**CORAM: NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.
DATE : 14 NOVEMBER 2022.**

P.C.:

Heard learned Counsel for the parties.

2 The Petitioner No.1 is a Director and Chief Promoter of Petitioner No.2-Developer, Petitioner No.2 is a Developer and Respondent No.3 is a Co-operative Housing Society.

3 The Petitioners constructed the premises thereafter entered into an Agreement with the individual flat owners. According to the Petitioners till the First General Body Meeting is held the Petitioners are entitled to

receive maintenance charges and other expenses from individual members. The Petitioners have sought to question the legality of the Body of the Respondent-Society and have thereupon refused to handover necessary documents as per the relevant bye-laws for handing over the premises in totality alongwith legal rights to Respondent No.3-Society. In light of this position, thereupon, the impugned order has been passed.

4 The learned Counsel for the Respondent-Society submits that Petitioners are needlessly raising various issues and they had agreed that upon First Annual General Meeting be held all the documents as per the relevant bye-laws will be handed over. The learned Counsel for the Respondent-Society further submits that the Petitioners are under legal obligation to handover all the documents as per the relevant bye-laws to the Registered Co-operative Housing Society Respondent No.3 and cannot withhold the same. Learned Counsel for the Petitioners states that at the most the Petitioners may consider the handing over necessary documents as per the relevant bye-laws to the Deputy Registrar Respondent No.1, but not to the Respondent No.3 Co-operative Housing Society.

5 According to us this is not a litigation which requires us to dwell further in the writ jurisdiction. If the Petitioners have any right to recover any monetary component either from Respondent No.3 or the individual

flat owners, the Petitioners will have to take out legal proceeding for that purpose and non-handing over of the documents cannot be used as a tool to recover the money which is under dispute. As regards handing over of the documents is concerned, we direct that the Petitioners will handover the same to the Respondent No.1-Deputy Registrar who would, thereafter, after examining the position in law and fact, handover the same to Respondent No.3-Co-operative Housing Society. The Petitioners shall submit all necessary documents as per the relevant bye-laws to the Respondent No.1-Deputy Registrar within a period of two weeks. Thereafter, the Deputy Registrar would take necessary action as per law within a period of four weeks.

6 As regards the monetary liability sought to be claimed by the Petitioners, it is open to the Petitioners to take appropriate proceedings as per law which will be decided on their own merits.

7 The Writ Petition is accordingly disposed of in above terms.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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