

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6674 OF 2022

Mukesh Ramswarup Purohit & Anr.

..... Petitioners

VERSUS

State of Maharashtra & Ors.

..... Respondents

Mr.Omkar Warange, i/b. Ms.Nilima C.Sarvagod for the Petitioners.

Mr.Karan S.Thorat, A.G.P. for the State.

Mr.Ajit Anekar, a/w. Ms.Madhuri Rawat, i/b. Auris Legal for the Respondent no.5.

CORAM: R. D. DHANUKA AND

M.G.SEWLIKAR, JJ.

DATE : 20th JUNE, 2022

P.C:-

The papers are allowed to be produced on production board.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek writ of certiorari for setting aside communication dated 30th May, 2022 issued by the respondent nos. 3 and 4. The petitioners also seek writ of mandamus against the respondent nos. 3 and 4 to allow the petitioners and other flat owners to participate in the election programme to be conducted by the

respondent nos. 3 and 4 in accordance with the order dated 30th May, 2022 passed by this Court in Writ Petition No. 6012 of 2022.

3. In the alternative, the petitioners also prays for writ of certiorari against the respondents and prays for quashing and setting aside the orders dated 12th April, 2022 and 25th April, 2022 passed by the respondent nos. 2 and 4 respectively.

4. It is not in dispute that the petitioners along with others had applied for formation of the separate society. The developer had applied for formation of the society separately. Initially both the applicants did not get any relief in their respective applications. In the review application filed before the learned Minister, the learned Minister passed an order allowing the review application filed by the respondent no.5 and dismissed the review application filed by the petitioners.

5. Being aggrieved by the said order, the petitioners filed a writ petition bearing no. 6012 of 2022 in this Court *inter alia* praying for a writ of certiorari for quashing and setting aside the order dated 12th

April, 2022 passed by the learned Minister and for other reliefs.

6. The matter was moved before the Vacation Court. On 13th May, 2022, the learned Vacation Judge recorded the statement made by the learned A.G.P. that the respondent no.3 shall convene a meeting of the members of the society within a period of four weeks from the date of the said order and would take steps for holding elections and appointment of the managing committee of the society by following due process of law. After recording the statement of the learned A.G.P., the learned Vacation Judge recorded that in view of the said statement made by the learned A.G.P., the grievances of the petitioners stands redressed. The Vacation Court also recorded that the petitioners did not raise any objection if the elections are held and a duly elected managing committee is installed. After recording such finding, the learned Vacation Judge directed the respondent no.3 to ensure that the entire exercise is complete within three months from the date of the said order.

7. Pursuant to the said order passed by the learned Vacation Judge, the Authority convened the meeting. The petitioners and few others

wanted to participate in the said meeting. The authority passed an order on 30th May, 2022 refusing to allow the petitioners to participate in the said meeting. The said order dated 30th May, 2022 is impugned by the petitioners in this petition. The petitioners have also prayed for other reliefs.

8. It is submitted by the learned counsel for the petitioners that in view of the order dated 13th May, 2022 passed by the learned Vacation Judge, the Authority could not have restrained the petitioners from participating in the said meeting convened pursuant to the said order dated 13th May, 2022.

9. Learned counsel for the respondent no.5 on the other hand invited our attention to the prayers in Writ Petition No. 6012 of 2022 filed by the petitioners herein and would submit that the order passed by the learned Minister was impugned in the said writ petition. He submits that in the said writ petition filed by the petitioners, the learned Vacation Judge did not interfere with the order passed by the learned Minister and recorded a finding that the grievances of the petitioners stood redressed in view of the learned A.G.P. making a statement

before this Court that the Authority shall convene the meeting of the members of the society for holding election and for appointment of the managing committee of the society by following due process of law. The petitioners did not follow the said order dated 13th May, 2022.

10. A perusal of the said order, clearly indicates that the learned A.G.P. had made a statement that the authority would convene a meeting of the members of the society.

11. It is common ground that the petitioners along with few others had filed separate application for the registration of the society. The said application filed by the petitioners for formation of the separate society was not accepted by the learned Minister. The said order passed by the learned Minister had attained finality in view of the order dated 13th May, 2022 passed by the learned Vacation Judge in Writ Petition No.6012 of 2022.

12. The application filed by the petitioners for membership of the society sought to be registered by the petitioners did not survive in view of the said society not having been registered.

13. The petitioners have now applied for membership of Shridham Classis Co-operative Housing Society. The said application is not yet decided. In our view, since the petitioners have not become the members of the said society Shridham Classis Co-operative Housing Society, the question of the authority permitting these petitioners to participate in the meeting conducted by the said society as members did not arise.

14. In our view, writ petition is thoroughly misconceived and is accordingly dismissed with cost quantified at Rs.25,000/- which shall be paid by the petitioners to the Maharashtra Legal Service Authority within one week from today and shall produce a receipt acknowledging the payment of the cost before the Sheristedar of this Court.

[M.G.SEWLIKAR, J.]

[R. D. DHANUKA, J.]