

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

**WRIT PETITION NO.9140 OF 2021
WITH
WRIT PETITION NO.9142 OF 2021**

Accessories and Companies Pvt. Ltd. ..Petitioner
Versus
Neelambari Erandwane Co-operative
Housing Society Ltd. & Ors. ..Respondents

Mr. Mandar Limaye i/by Ketan A. Dhavle, for the Petitioner
in both Petitions.

Mr. Sachin Mandlik a/w Sayali Phansikar i/by Mandlik &
Partners, for the Respondent No.1.

Mr. S. D. Rayrikar, AGP for Respondent Nos.2 to 5 in WP
No.9140/2021.

Mr. P. P. Pujari, AGP for Respondent Nos.2 to 5 in WP
No.9142/2021.

CORAM : NITIN W. SAMBRE, J.

DATE : 2nd AUGUST, 2022

P.C.

1. Heard.

2. On 31st August, 2020, the respondent/District
Deputy Registrar passed an order thereby permitting
registration of the respondent No.1 society which was
subsequently categorized as the Housing Society and sub-
categorized as the Tenants' Co-operative Housing Society.

3. The said order was passed in accordance with

BGP.

provisions of Section 10(1) of the Maharashtra Ownership of Flats Act, 1963 (hereinafter referred to as “the said Act” for the sake of brevity).

4. The present petitioner feeling aggrieved preferred an appeal before the Divisional Joint Registrar, Co-operative Societies, who vide its order dated 1st January, 2021 set aside the aforesaid order and remanded the matter back on the ground that sufficient opportunity of hearing was not granted to the petitioner during covid pandemic. In addition, certain observations were made in relation to the area of the society i.e. area on which the project was implemented etc. The respondent No.1 herein feeling aggrieved preferred a revision before the State Government under Section 154 of the Maharashtra Co-operative Societies Act, which came to be allowed vide order impugned dated 8th September, 2021.

5. While questioning the aforesaid order, counsel for the petitioner/developer, Mr. Mandar Limaye would urge that the first order dated 31st August, 2020 passed by the District Deputy Registrar in exercise of powers under Section 10(1) of the said Act was without offering appropriate opportunity of hearing. So as to substantiate his contentions, he would urge that even though a lawyer was representing interest of the petitioner before the said authority, on the last date of hearing lawyer failed to

remain present before the authority, as there was no sufficient notice. According to him, the said fact has prevailed before the appellate authority to set aside the order. In addition his contentions are, the respondent No.1 society has mentioned incorrect area of the plot and same will give rise to further complications as right of the petitioner will be prejudiced in future, in case, if respondent comes out with a prayer for grant of deemed conveyance under Section 11(3) of the said Act. He would further urge that there are *inter se* civil proceedings pending before the authority and that being so, the order impugned passed by the State Government is without considering the factual matrix. As such, he would urge that the order impugned passed by the State Government on 8th September, 2021 is liable to be quashed and set aside.

6. As far as Writ Petition No.9142 of 2021 is concerned, the order impugned is as a sequel of the order dated 8th September, 2021 passed by the State Government, whereby the registration certificate is issued in favour of the respondent No.1 society. The challenge in the said petition is also based on the aforesaid submissions.

7. Counsel for the respondent would support the order impugned, as according to him, what is permitted by

the impugned order is only the registration of the society. According to him, the provisions do not confer any absolute right of ownership over the property. He would further urge that already the rival claim between the parties was adjudicated before the Consumer Forum, wherein certain directions were issued against the present petitioner. As such, according to him, the petition is liable to be dismissed.

8. It appears that the Deputy Registrar having satisfied that the petitioner/promoter has failed to take steps for formation of the society has exercised the statutory provisions and has directed the registration of the society based on deeming fiction.

9. Though Mr. Mandar Limaye has claimed that there was no notice of last hearing or sufficient opportunity was not offered by the Deputy Registrar, however, fact remains that the matter was adjourned at least more than two times and the interest of the petitioner was very much represented through the lawyer before the said authority.

10. As such, State Government, in my opinion, was justified in upsetting the finding of the Divisional Joint Registrar on the said count.

11. As regards the issue of area mentioned in the

application is concerned, needless to clarify that the society in relation to which the registration is ordered has admittedly established and the members of respondent society are the purchasers of flat in a building developed over the area which was in the control of the petitioner.

12. Merely because, there was incorrect mention of area in an application that by itself will not disentitle the respondent No.1 society to claim benefit under Section 10 of the said Act.

13. As far as grant of registration certificate is concerned, same is sequel of the order impugned i.e. ordering registration.

14. In the aforesaid background, in my opinion, no case for interference in the order impugned is made out, as the same appears to be in tune with the first proviso to Section 10 of the said Act.

15. As such, both these petitions lack merits, stand dismissed.

[NITIN W. SAMBRE, J.]