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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12044 OF 2016
WITH
INTERIM APPLICATION NO.17159 OF 2022
IN
WRIT PETITION NO. 12044 OF 2016**

Samhita Co-operative Housing Society Ltd.

Through its Secretary

Mr. Amit B. Shah

.... Petitioner.

V/s

The Divisional Joint Registrar

Co-operative Societies, Mumbai and Others Respondents.

Mr. Jitendra Kumar G. Damani for the Petitioner.

Mrs. M.S. Bane, AGP for Respondent Nos. 1 and 2.

Mr. Yogesh P. Yagnik for Respondent Nos. 3 and 4.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 10, 2022

P.C.:-

1] Petitioner has questioned the order dated 28/2/2013 passed in exercise of powers under sub-section (2) of Section 22 of the Maharashtra Co-operative Societies Act (hereinafter referred to for the said of brevity as “the said Act”), thereby declaring Respondent No.3 as member of the Society being owner of Flat No.G-1. The said order was questioned by the Petitioner-Society in Revision Application No.272 of 2013 which is dismissed vide order dated 8/8/2016. As such, this Petition.

2] Submission of Counsel for the Petitioner is, premises in relation to which order of deemed membership is passed pursuant to the provisions of sub-section (2) of Section 22 of the said Act is without any legal basis. According to him, suit premises were purchased by Respondent No.3 for operating dispensary i.e. for non—residential/commercial use. He would urge that even car parking space i.e. garage is covered for the purpose of such non-residential activity which will give rise to nuisance in the society premises and will cause substantial disturbance. Additional contentions are, orders impugned, thereby granting membership in favour of Respondent No.3 are contrary to the very object of cooperation which is sought to be achieved under the provisions of the Act. As such, according to him, impugned orders are liable to be quashed and set aside. In addition, he has invited my attention to the consequential order passed by the District Deputy Registrar whereby notices were issued to the Petitioner to produce Membership Register so as to incorporate name of Respondent No.3 as member of the Petitioner-Society.

3] Counsel for Respondent Nos. 3 and 4 would oppose the aforesaid contentions. According to him issue as to whether the Respondent No.3 is using the premises for residential or commercial purpose cannot be a ground for rejection of claim of membership. He would then urge that orders are in tune with the provisions of Section 22 of the Act. That being so, against concurrent findings, Petition is liable to be dismissed.

4] I have appreciated the aforesaid submissions. It appears that suit premises were purchased by Respondent No.3 on 2/8/2010 and he has applied for grant of membership on 17/3/2011. After the said application was received by the Petitioner-Society on 27/11/2011, Petitioner-Society has raised an objection thereby bringing to the notice of Respondent No.3 about variance in the area to be occupied and verification of the area to be occupied.

5] Fact remains that predecessor-in-title of Respondent No.3 from whom Respondent No.3 has purchased the Flat in question was admittedly member of the Petitioner-Society and as such, Respondent No.3 has stepped into the shoes of the said predecessor-in-title.

6] As regards the nature and use or any illegal activity or construction carried out by Respondent No.3 will be an independent issue to be gone into in independent proceedings. However, such issue cannot be co-related in the matter of grant of membership under Section 22 of the Act.

7] If Respondent No.3 is carrying out any activity in the premises in question contrary to the very bye-laws of the Petitioner-Society, Petitioner has every right to move against Respondent No.3 before the local authority or such other authority who will be in a position to redress the grievances of the Petitioner-Society. However, merely because there is intention of Respondent No.3 to put the suit premises

to non-residential use by itself will not create right in favour of the Petitioner-Society thereby refusing conferment of membership on Respondent No.3 under Section 22 of the Act.

8] In this backdrop, orders impugned in the Petition appear to be in tune with the provisions of Section 22 of the Act. That being so, Petition stands dismissed. As a sequel, pending Interim Application also stands dismissed.

9] However, this will not preclude the Petitioner from taking recourse to appropriate proceedings against Respondent No.3 before the competent authority including local planning authority i.e. Corporation or taking out such other proceedings in the form of dispute under Section 91 of the Act. If petitioner, Society comes out with any such grievance, same be decided in accordance with law.

10] Respondents-authorities are directed to stay their hands for a period of two weeks from today in the matter of compliance of the orders impugned as the Petitioner-Society within such period can comply with the orders by issuing membership certificate.

11] Petition is accordingly disposed of.

(NITIN W. SAMBRE, J.)