

September 27, 2022.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12125 OF 2018

Sunil S. Jain

....Petitioner

V/s.

1. Deputy Registrar, Co-operative
Societies, "H" West Ward.

2. Columbia Co-op Hsg. Soc. Ltd.

...Respondents

(Orig. Respondents)

3. Mohinder Singh Dua

4. Woodstock Securities Pvt. Ltd.

....Respondents

(Orig. Intervenors)

Mr. Mayur Khandeparkar i/by. Mr. Mehul Shah, Advocate
for the petitioner.

Mr. P.P. Pujari, AGP for State-respondent no.1.

Ms. Devyani Deshmukh, i/by. M/s. Solomon & Co.,
Advocate for respondent no.2.

Mr. B.R. Zaveri, Advocate for respondent no.4.

CORAM : SANDEEP K. SHINDE, J.

CLOSED FOR ORDERS ON : 21/09/2022.

PRONOUNCED ORDER ON : 27/09/2022.

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P.C :

1. The point for consideration is, Whether the Deputy Registrar, Co-operative Societies, was justified, in permitting respondents no.3 and 4 to implead themselves as respondents in the Appeal filed by the petitioner under Section 23(2) of the Maharashtra Co-operative Societies Act.

Following are the background facts ;

2. Petitioner purchased Flat no.64 on the 11th floor, in the building of respondent no.2-Society, with two car parking spaces by registered agreement of sale dated 16th October, 2015. The said Flat was sold to him by M/s. Kamla Landmarc Construction Pvt. Ltd, (Promoter-builder) on terms and conditions and subject to the provisions of the Maharashtra Ownership Flats Act. On 9th January, 2017 petitioner applied for membership of respondent-Society and submitted a registered Agreement for Sale dated 16th October, 2015; Undertaking dated 28th June, 2017 and a cheque of Rs.500/- towards the value of shares and Rs.100/- towards the entrance fees.

3. Apparently, there were disputes and on-going litigations between M/s. Kamla Landmarc Constructions Private Limited (Promoters) and the respondent no.3.

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Moreover, the respondent no.4 would also claim that, M/s. Kamla Landmarc Constructions Pvt. Ltd. sold him the Flats no.62 and 63 on the 11th floor of the building of respondent no.2. The Managing Committee of the Society in its' meeting dated 31st July, 2017 rejected petitioner's application for membership, for the reasons stated therein.

4. Feeling aggrieved thereby, the petitioner filed an Appeal under Section 23(2) of the Maharashtra Co-operative Societies Act before the Deputy Registrar-respondent no.2.

5. In the said Appeal, the respondents no.3 and 4 sought intervention; requesting the Deputy Registrar to implead them as the respondents therein.

6. The Deputy Registrar vide order dated 24th July, 2018 allowed the impleadment of respondents no.3 and 4.

7. Feeling aggrieved by the said order, this petition is preferred.

8. Heard Mr. Mayur Khandeparker, learned Counsel for the petitioner, Mr. Zaveri, learned Counsel for respondent no.4 and AGP for the State. None appears for respondent no.3. Also perused the Affidavit-in-reply of the Deputy Registrar.

9. At the outset it may be stated that, neither the impugned order nor the Affidavit-in-reply of the Deputy Registrar, state any reasons for, permitting, impleadment of

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respondents no.3 and 4, as party to the Appeal filed by the petitioner under Section 23(2) of the Maharashtra Co-operative Societies Act.

10. The impugned order, simply reproduces contents of application moved by respondents no.3 and 4, nothing more, nothing less.

11. The Learned Deputy Registrar, conveniently overlooked a fact, that neither respondent no.3, nor 4 had applied to the Society for the membership, nor examined as to how their presence is necessary for decision in Appeal.

12. Thus, the Deputy Registrar overstepped his jurisdiction inadvertently or deliberately either by misreading the provisions of the Maharashtra Co-operative Societies Act. Even otherwise, the Deputy Registrar, is not invested with powers of Civil Court, to exercise jurisdiction under Order 1 Rule 10 of Civil Procedure Code. Therefore, without commenting much about the impugned order and the Affidavit-in-reply of the Deputy Registrar, I hold that the order was without jurisdiction and therefore bad-in-law.

13. Mr. Khandeparkar, Learned Counsel for the petitioner, although has taken me through the orders passed in the proceedings between M/s. Landmarc Constructions Pvt. Ltd. and respondent no.3, including orders passed by this Court

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in the arbitral proceedings between them, I deem it appropriate not to burden this order with the facts and the orders passed in those proceedings.

14. In consideration of the facts of the case and the reasons stated above, the question is answered accordingly.

15. In the result, the impugned order 24th August, 2018 is quashed and set aside.

16. The Deputy Registrar, "H" West Ward, Mumbai is directed to decide the Appeal No.20/2017 filed by the petitioner without four weeks from the receipt of this order in accordance with law.

17. The Writ Petition is allowed in the aforesaid terms and disposed of accordingly.

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(SANDEEP K. SHINDE, J.)