

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9190 OF 2018

Vinayak Adarsha Co-operative
Housing Society Ltd.,
Shahanoorwadi, Tilak Nagar,
Aurangabad, Dist. Aurangabad,
Through its Chairman/Secretary

.. Petitioner

Versus

1. Smt. Indumati Laxminarayan Wadkar
Age : Major, Occu. : Household and
Business, R/o 7, Ketki Apartment,
Adarsha Colony, Garkheda Parisar,
Aurangabad, Dist. Aurangabad.
2. Laxminarayan s/o Mahantappa Wadkar
Age : Major, Occu. : Business,
R/o. As above.
3. Taluka Deputy Registrar,
Co-operative Societies,
Laxmi Apartment,
Opp. Motiwala Complex,
Nageshwarwadi, Aurangabad,
Tal. & Dist. Aurangabad.
4. The Divisional Joint Registrar,
Co-operative Societies, Aurangabad.

.. Respondents

Mr. S. S. Thombre, Advocate for the Petitioner.

Mr. P. R. Katneshwarkar, Advocate h/f Mr. Ganesh V. Sukale, Advocate
for Respondent Nos. 1 and 2.

Mr. K. B. Jadhavar, AGP for Respondent Nos. 3 and 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 11th July, 2023.

Date on which judgment pronounced : 04th September, 2023.

JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of the parties taken up for final disposal.

2. This petition is by Co-operative Housing Society against its members. A challenge is raised to the judgment and order passed by the Divisional Joint Registrar dated 25.05.2018 in Revision Application No. 11/2017. By the impugned order the Divisional Joint Registrar has confirmed the order passed by respondent No. 3 dated 11.01.2017. The respondent No. 3 had passed an order in favour of respondent Nos. 1 and 2 thereby allowed to raise construction of flatted building on a plot allotted to them.

3. The facts in short are that, the petitioner – society is a Housing Society having registration No. 161/67. The society purchased a land and divided the same in plots for its members. For the purpose of smooth running and conduct of the business of the society, it has its own bye-laws. The respondent Nos. 1 and 2 are the transferees of one of the plots bearing plot No. 13 as the original allottee of plot No. 13 resigned from his membership and executed sale deed/lease deed dated 26.11.2012 along with construction thereon in favour of respondent Nos. 1 and 2. The respondents thereafter filed an application with the society requesting for permission to construct a

flatted building. The society in view of bye-laws did not grant such permission. The respondents therefore approached respondent No. 3 – Taluka Deputy Registrar Co-operative Society. He allowed the application of the respondents and granted no objection to construct a flatted building only for residential purpose. It is further directed to make the flat owner as nominal member of the society. It is this order that came to be challenged by the petitioner by filing Revision Application No. 11/2017. It is held by the authorities that on earlier occasion the society had granted permission to some other members to construct flatted building. It is held that, the bye-law putting restriction on the members from making construction of flatted building is not legal. The said bye-law is not binding as the same is not approved by the authority.

4. The petitioner has thus approached this Court with the submissions that as per bye-laws of the society which are duly approved no member can be allowed to construct a flatted building. The bye-laws were duly approved by the authority and thus the judgment and the order passed by both the authorities is illegal. It is specific case of the society that the bye-laws of the society were approved on 28.05.2015 and those are binding on all the members. On earlier occasion the respondents had sought permission to make construction

of flatted building and the said was rejected and it was not challenged and therefore, the respondents could not have again filed an application seeking such permission. If at all, the respondents are aggrieved by the bye-law, they should have challenged the bye-law by filing a dispute under Section 91 of the Maharashtra Co-operative Societies Act (for short "MCS Act") as the dispute falls under Section 91 (c) of the MCS Act.

5. In support of the petition, learned advocate Mr. Thombre for the petitioner submitted that, every member of the society is bound by bye-laws. If at all, any member is aggrieved by any of the bye-laws, then proper remedy is to approach the Co-operative Court. In this case instead of challenging the bye-laws the respondents approached respondent No. 3. The respondent No. 3 could not have entertained such application. The respondent No. 3 exercised a jurisdiction not vested in him by granting such permission by holding that the particular bye-law is not approved and has never come in force. No authority can go beyond bye-laws. In support of his submissions he relied upon the judgment in the case of Wadala Shri Ram Industrial Premises Co-operative Society Limited Vs. Kotecha and Company(M/s.) and others reported in 2001 (4) Bom.C.R. 365.

6. Learned advocate Mr. Katneshwarkar for respondent Nos. 1 and 2 submits that, only bye-laws Nos. 1 to 165 were approved by the authority. The bye-law which restricts a member from constructing a flatted building is bye-law No. 165 (a) which is not approved. The respondent Nos. 1 and 2 were duly inducted as members and the plot was transferred in their name. He submits that, on plot No. 13 already there is a flatted building constructed by one other member. Those flats are sold to various persons and every flat owner is accepted as nominal member of the society. He thus submits that, there is no such restriction on raising a flatted building. He further submits that, as per bye-law No. 165 (a) for redressal of grievance there has to be a committee, however, such committee is never formed. Since there is no committee for redressal of grievances against the society, the only remedy is to approach the Registrar. So far as remedy under Section 91 of the MCS Act is concerned, he submits that, the present dispute is not covered under Section 91 of the MCS Act as the present dispute is not pertaining to the election or in respect of the matter touching the business of the management of the society. He submits that, the dispute as regards individual light is not covered under Section 91 of the MCS Act and thus, no remedy is available to respondent Nos. 1 and 2 than to approach respondent No. 3.

7. Learned A.G.P submits that the order passed by the authorities itself is clarificatory and no interference is required at the hands of this Court.

8. In rebuttal, learned advocate Mr. Thombre for the petitioner submits that, when the society has passed the resolution introducing the bye-law and when the said is approved, it is binding on the parties. This bye-law No. 165 (a) thus formed part of the resolution. He further submits that, in view of bye-law the dispute needs to be filed before the Co-operative Court under Section 91 of the MCS Act.

9. To see as to whether the bye-law No. 165 (a) has any binding effect on the respondents it needs to see as the binding effect of bye-laws. Section 13 of the MCS Act deals with the amendment of bye-laws of society. Section 14 of the MCS Act gives Registrar power to direct amendment of bye-laws. Relevant portion of Section 13 (1) of the MCS Act reads as below :

13. Amendment of bye-laws of society.- (1) No amendment of the bye-laws of a society shall be valid until registered under this Act. For the purpose of registration of an amendment of the bye-laws, a copy of the amendment passed, in the manner prescribed, at a general meeting of the society, shall be forwarded to the Registrar. Every application of registration of an amendment of the bye-laws shall be disposed of by the Registrar within a period of two months from the date of its receipt.

10. Section 14 of the MCS Act reads as under :

14. Power to direct amendment of bye-laws

(1) If it appears to the Registrar that an amendment of the bye-laws of a society is necessary or desirable in the interest of such society, [or any bye-laws of the society are inconsistent with the provisions of this Act or rules and that amendment is necessary in such bye-laws] he may call upon the society, in the manner prescribed, to make the amendment within such time as he may specify.

(2) If the society fails to make the amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard and after consulting such State federal society as may be notified by the State Government, register such amendment, and issue to the society a copy of such amendment certified by him. With effect from the date of the registration of the amendment in the manner aforesaid, the bye-laws shall be deemed to have been duly amended accordingly; and the bye-laws as amended shall, subject to appeal (if any), be binding on the society and its members.

11. By reading these sections it clearly appears that, no amendment of the bye-law of a society is valid till it is registered under the Act. The proposed bye-law passed in the general meeting of the society needs to be forwarded to the Registrar. On receipt of the same, it is the Registrar who has to dispose off the application for registration and the same application is to be disposed off by the Registrar within a period of two (02) months. In case of failure on the part of the Registrar he has to refer the application to the next higher officer who shall dispose off the application within two (02) months from the date of its receipt.

In case of failure of such higher officer or the State Government the said bye-law is deemed to have been registered. In this case, there is no case that the clarification of bye-law No. 165 (a) was ever sent to the Registrar for its approval. There is also no seal and signature appearing of the Registrar on the said clarification as is discussed in further paragraphs.

12. Thus, it is necessary for the petitioner to show that the bye-law for the amendment is approved by the Registrar or a case is made out to make the registration of bye-law in view of Section 13 (1) (A) of the MCS Act. As per Section 14 of the MCS Act a power is given to the Registrar to direct the society to amend the bye-laws of the society wherever it is necessary or desirable in the interest of such society or any cases where it is in-consistent with the provisions of this Act or the Rules. From reading of Sections 13 and 14 of the MCS Act, it is clear that, it is the power of Registrar to register the bye-laws and in some cases to register the amendment in the bye-laws and where it is necessary. The Registrar is given power to direct to amend the bye-laws. What is clear from reading of both the sections is that, without registration no bye-law can be said to be a bye-law. Even looking to Section 9 of the MCS Act, when the society is registered, the Registrar has to satisfy that the proposed bye-laws of the society are not contrary

to this Act or the rules.

13. Thus, reading of Sections 9, 13 and 14 clearly show that, it is the ultimate control that the Registrar to register the bye-laws. Naturally no bye-law without registration can be said to be valid bye-laws. This case needs to be considered by keeping in view these three sections.

14. To show that the bye-laws are approved learned advocate Mr. Thombre for the petitioner invited attention to the bye-laws. On going through the bye-laws it is found that, till bye-laws Nos. 1 to 165 are signed by the Secretary and the President of the petitioner – society. Those are also signed by the members of Board of Directors having seal of respondent No. 3 with endorsement that the said bye-laws are approved. It also bears the date as 28.05.2015. Below that page number is also seen as 74 (2). In the said bye-laws there is no wording appear about the restriction on the members of constructing a flatted building. On page No. 74 (3) a clarification is given which reads as below :

“या उपविधीत पेज क्र. 1 ते 74 (3), उपविधी क्र. 1 ते 165 (अ) मध्ये ज्या ज्या ठिकाणी “गाळा” (प्लॅट) असा शब्द छापील किंवा लिहिलेला आढळून येईल त्या त्या ठिकाणी प्लॉट/बंगला/घर अशी दुरुस्ती करून वाचण्यात यावे. भुखंडावर/प्लॉटवर/प्लॅटस् बांधण्याची परवानगी असणार नाही. तसेच त्याचा वापर व्यावसायिक दृष्ट्या करता येणार नाही. तसे

आढळून आल्यास अटी व शर्तीचा भंग झाला असे गृहित धरून सभासदांविरुद्ध
उपविधी नुसार कारवाई केली जाईल.”

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74 (3)

15. Thus, the wording shows that no construction of flatted building shall be allowed or commercial use will be allowed by any of the members. However, below that there is no seal and signature of respondent No. 3 endorsing that the said bye-law is approved. It is seen that, this portion is inserted any time subsequent to 28.05.2015 as there is no seal and signature of the authority endorsing its approval. There is also no date appearing below this insertion. This Court finds that, if the bye-law has not received approval of the authorities under the MCS Act, the said bye-law cannot be said to have binding effect on the members of the society.

16. Second submission is that, in view of bye-law No. 165 (a) the respondents ought to have approached the Co-operative Court by filing a dispute. Looking to bye-law No. 165 (b) it provides for a dispute only in three cases i.e. in respect of dispute (a) between resolution of managing committee and general body (b) if nomination form is rejected under Section 152 of the Act and (c) in respect of election to the committee. Thus, the present dispute cannot be said to be dispute

falling under the above categories. This Court finds that, the submission of learned advocate Mr. Katneshwarkar for respondent Nos. 1 and 2 to be correct as no committee for redressal of grievance of the members is formed and therefore, the respondent Nos. 1 and 2 had no option than to approach respondent No. 3. Going through the bye-laws produced on record this Court also finds that the bye-law restricting the members is not approved by the authority and therefore, such bye-law cannot have binding effect on the members of the society and in that view of the matter also there cannot be restriction on the respondents in constructing a flatted building.

17. Coming to the judgment cited by learned advocate Mr. Thombre for the petitioner in the case of **Wadala Shri Ram Industrial Premises Co-operative Society Limited** (supra), this Court has held that, the member of the society cannot challenge the constitutionality or the vires of the bye-law. In the said case, the bye-law was not registered. A challenge was to registering of the amendment of bye-law by filing an appeal under Section 152 (1) of the MCS Act. The appeal was allowed by the Divisional Joint Registrar and the said was challenged in the writ petition. This Court held that, the question as to whether the member of the society can challenge the bye-law and make a grievance that the bye-law has no application qua them. It is held that, the appellant

authority can only examine the matter in the context of the powers of the original authority under Section 13 of the Act. The members cannot challenge the constitutionality of the bye-law or the validity of the amendment. This Court finds that, this judgment has no application in the present case as in the present case the bye-law which is sought to be relied upon by the petitioner - society itself is not approved by the competent authority and thus the said bye-law cannot have a binding effect on the members.

18. The learned Divisional Joint Registrar has rightly held that, the bye-law which restricts the member from constructing a flatted building itself is not approved. Though it is sought to be contended that the bye-law was approved, however, as discussed that while allowing the bye-law only bye-law Nos. 1 to 165 (a) were before the authority. The so called amendment is at page No. 74 (2) is approved whereas, the alleged bye-law appears at page No. 74 (3). There is no signature or seen of the authority showing that the same is approved by the authority. So even on facts this Court finds that, when no such bye-law was in existence, no fault can be found with the orders passed by both the authorities. The authorities have rightly concluded that the respondent – member cannot be restrained by the society and in other words no permission is required to construct a flatted building on the

plot allotted to any of the members of the petitioner – society.

19. Considering the arguments and the submissions it is seen that, entire controversy revolves around bye-law No. 165 (a) and the validity of the said bye-law. For considering the question of validity of bye-law it needs to see as to whether the said bye-law is approved by the authority. There is no dispute that the bye-laws required approval from the authority under the Act. It is only such bye-laws which are approved can be said to be valid having binding effect upon the members. It is clear that, if the bye-law is not approved by the authority then such bye-law cannot have binding effect and cannot be said to be valid.

20. Thus, this Court finds that, no case is made out to call for interference in the impugned orders and the writ petition deserves to be dismissed. Hence, the writ petition stands dismissed.

21. Rule stands discharged.

(KISHORE C. SANT, J.)

PS.B.