

Amol

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

**WRIT PETITION NO. 3146 OF 2022
WITH
INTERIM APPLICATION NO. 1301 OF 2023
IN
WRIT PETITION NO. 3146 OF 2022
WITH
INTERIM APPLICATION (ST) NO. 4655 OF 2023
IN
WRIT PETITION NO. 3146 OF 2022**

Miss Rekha Premchand Safari & Anr.	Petitioners
V/s.	
Upnibandha Sahakari Sanstha & Anr	Respondents

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Ms. Rekha P. Safari petitioner in person present.
Mr. A. P. Vanarse, AGP for State-Respondent.
Mr. M. A. Khan a/w. Nita Parekh and Uzair Shaikh for Respondent No.2.

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**CORAM : K. R. SHRIRAM &
RAJESH S PATIL, JJ.**

DATED : 23rd FEBRUARY 2023

P.C.:

1. Petitioners have approached this court for the issuance of writ of mandamus to set aside the order dated 18th February 2022 passed by respondent no.1 and to direct issuance of share certificate to petitioner no.1 and petitioner no.2 for flat no. 1401 and flat no.1501, respectively. Petitioner no.1 who is appearing in person for herself and on behalf of petitioner no.2 states that even

if the court is not inclined to set aside the order dated 18th February, 2022, the courts should at least direct the society, respondent no.2-Ramkrupa Co-operative Housing Society Limited to issue the share certificates to petitioners.

2. Mr. Khan, at the outset admitted that petitioners were members of Ramkrupa Co-operative Housing Society Limited. This was in response to petitioners statement that petitioners directly got the flats from the developer/builder when the building went for redevelopment. Mr. Khan states that petitioners were original tenants in the building which went for redevelopment.

3. Mr. Khan submitted that both petitioners owe substantial amounts of money to the society running to approximately Rs. 40 lacs together for both the flats. Mr. Khan stated that society has no problem for issuing the share certificates provided petitioners file appropriate/correct application for issuance of share certificates and pay all the outstanding dues of the society. We repeatedly asked Mr. Khan to show us the provision which permits the society to exercise a lien on the share certificates which a member as matter of right is entitled. Mr. Khan was unable to show any such provision.

4. Therefore, we pass the following order and dispose the petition:

a. Petitioners shall, within two weeks from

today, give an undertaking on non judicial stamp papers of Rs. 200/- purchased in the name of petitioners as required by the letter dated 20th March, 2020, copy whereof annexed as Exhibit-B to the petition.

b. Within two weeks from the date of receiving the application, the society shall issue the share certificates to petitioners. Mr. Khan requests four weeks time. Four weeks time granted.

c. We make it clear that society having issued the share certificates in compliance with this order, it will not absolve petitioners from paying their dues to the society and it is open to the society to take such steps, as advised to recover these amounts from the petitioners.

5. We have to note that Ms. Safari, petitioner no.1, who appeared in person states that the family is in dire financial need, and therefore, they wish to dispose one of the flats. Mr. Khan in fairness stated that if petitioners pay society's dues, certainly society will have no objection to issue the no objection certificate. At the same time, in our view, society may suffer no prejudice, if the society issues a no objection certificate with a qualification that no objection certificate will be valid subject to payment of all dues of society. In our view, by issuing such a certificate it would

protect society's interest as well as petitioners who may at least get a prospective buyer.

6. We clarify that we have not foreclosed the right of the society to recover its dues from defaulting members in accordance with law.

7. Petition disposed.

8. All pending interim applications also stand disposed.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)