



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1130 OF 2021

Everard Towers Co-operative Housing Society Ltd. ...Petitioner

Versus

State of Maharashtra & Ors. ..Respondents

Mr. Bhavik Manek a/w. Mr. Pranav Chavan i/b. Mahesh Menon, for the
Petitioner.

Mr. S. D. Rayrikar, AGP, for the State/Respondent Nos.1 to 3.

Mr. Sanjeev Punalekar and Mr. Ranjeet Nair i/b. Ms. Suvarna Vast Avhad,
for Respondent No.4.

CORAM : MADHAV J. JAMDAR, J.

DATED : 9th OCTOBER 2023

JUDGMENT :

1. Heard Mr. Manek, learned Counsel appearing for the Petitioner,
Mr. Rayrikar, learned AGP appearing for the State/Respondent Nos.1
to 3 and Mr. Punalekar, learned Counsel appearing for Respondent
No.4.

2. The challenge in the present Writ Petition is to the legality and
validity of the Order dated 26th February 2019 passed by the learned
Deputy Registrar, Co-operative Societies, L Division, Mumbai in
Recovery Application No.24 of 2018 filed under Section 101 of the
Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to

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as “**said Act**”) and to the legality and validity of Order dated 4th January 2020 passed by the learned District Deputy Registrar, Co-operative Societies(2), Eastern Suburb, Mumbai in Revision Application No.11 of 2019 filed under Section 154 of the said Act. Both the impugned Orders have been passed by giving reasons that there are triable and complicated issues are involved in the matter.

3. The factual position on record shows that the dispute is with respect to the arrears of maintenance charges regarding flat No.B/106, Everard Towers Co-operative Housing Society Limited, Sion (“**said flat**”). The said flat was belonging to original member Mrs. Queenie Szarafinski who was residing abroad. The said original member passed away on 16th January 2009 and after the death of original member, the Respondent No.4-Valentine Charlesworth claimed membership on the basis of last Will and Testament dated 11th February 2008 of the deceased. He has also relied upon nomination dated 2nd December 2004. The Petitioner-society however, did not transfer the Share Certificate in the name of Respondent No.4 and therefore, Respondent No.4 approached the learned Deputy Registrar Co-operative Societies and obtained Order dated 8th August 2012 directing the Petitioner to transfer the Share

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Certificate to the name of the Respondent No.4 and said Order was challenged by the society and ultimately the said challenge failed vide Order dated 26th July 2013 passed by this Court in Writ Petition No.5669 of 2013. Thereafter, the Share Certificate was transferred on 4th September 2013 in favour of the Respondent No.4. In the meanwhile, the redevelopment of the society's building took place and developer constructed the new building comprising of 2 basements +Ground+12 floors having 92 residential flats. The developer by letter dated 16th March 2016 forwarded an amount of Rs.5,39,750/- to the Petitioner-Society which was due and payable to the said original member.

4. Thereafter, the society initiated proceedings under Section 101 of the said Act seeking recovery of Rs.4,11,129/-. The said Application was filed on 22nd May 2014 for the period of 1st April 2011 to 31st March 2014. On the basis of the said Application, the Recovery Certificate has been issued by Order dated 27th October 2017 passed by the learned Deputy Registrar, Co-operative Societies, L Division, Mumbai and the same has attained finality.

5. Thereafter, again the Recovery Application No.24 of 2018 is taken out in June 2018 for recovery of Rs.4,12,653/- as on April

2018 i.e. from 1st June 2014 to 30th September 2017. The learned Deputy Registrar after considering the various contentions and on the basis of the decision of a Division Bench of this Court in the case of ***Top Ten, vs. State of Maharashtra***¹ held that very small types of disputes in which only limited question is that of quantification of arrears due, is to be looked into by such Registrar while undertaking inquiry under Section 101 of the said Act. It is further held that either the arrears are already declared due by some authority or if the same can be ascertained on the basis of statement of accounts and other material on record can be determined by Registrar. The moment it is demonstrated to Registrar that a *bona fide* and genuine defense about said arrears is raised which calls for a finding on disputed facts, need for cross examination surfaces then in such event Section 101 of the said Act ceases to apply. It is further held that the concerned society, in such circumstances, has to take recourse to filing of a dispute under Section 91 of the said Act, where such disputed questions can be gone into. Hence, a *bona fide* defence being raised by a borrower or other person against whom such certificate is sought, cannot be resolved by the Registrar under this jurisdiction. If

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he finds such dispute arising, he has to deny the Recovery Certificate by passing appropriate judgment under Rule 86F of the Maharashtra Co-operative Societies Rules, 1961 (“**said Rules**”).

6. In view of the above legal position, it is necessary to appreciate the factual position. The said original member passed away on 16th January 2009. The Respondent No.4 claimed ownership on the basis of last Will and Probate obtained from the State of Michigan, USA and accordingly, the learned Divisional Joint Registrar, Co-operative Societies, Mumbai by Order dated 30th April 2013 dismissed the Revision filed by the Petitioner under Section 154 of the said Act and upheld the Order dated 7th August 2012 passed by the learned Deputy Registrar seeking membership. The Petitioner-Society challenged the said Order by filing Writ Petition No.5669 of 2013 and a learned Single Judge by Order dated 26th July 2013 dismissed the said Petition. The said order reads as under:-

“Heard.

By this petition, the petitioner impugns the order of the Divisional Joint Registrar, Co-operative Societies, Mumbai dated 30.4.2013 dismissing the revision filed by the petitioner under section 154 of the Maharashtra Co-operative Societies Act and upholding

the order of the Deputy Registrar dated 7.8.2012 allowing the application filed by the respondent no.1 under section 23 of the Act.

On hearing the learned counsel for the parties and on a perusal of the impugned orders it appears that there is no scope for interference with the impugned orders in exercise of the writ jurisdiction. **Mrs. Queenie Szaranfinski was the owner of the flat and the respondent no.1, who claims the membership under section 23 had produced a Will and the Probate obtained from the State of Michigan (U.S.A.) before the Authorities. The authorities found that the question whether the Will was valid or not could not have been considered by the authorities. The authorities held that there was nothing on record to show that the Probate was fraudulently obtained. Moreover, it was found that the petitioner-society had not sent a letter to the owner or to the respondent no.1 that the nomination of the respondent no.1 could not have been accepted. The findings recorded by both the authorities are pure findings of facts based on a proper appreciation of the material on record and call for no interference in exercise of the writ jurisdiction. The submission made on behalf of the petitioner that the order of the Deputy Registrar dated 7.8.2012 is contrary to its earlier order dated 13.9.2011 is not**

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well founded and liable to be rejected.

Since there is no merit in the writ petition the same is dismissed with no order as to costs.”

(Emphasis added)

7. It is significant to note that admittedly by letter dated 16th March 2013 the developer forwarded an amount of Rs.5,39,750/- to the Petitioner on account of the original member i.e. Mrs. Queenie Szarafinski. In fact, pursuant to orders passed by the authorities, as confirmed by this Court, as set out hereinabove the transfer of Share Certificate took place on 4th September 2013 and therefore, the Society should have made the payment of the said amount of Rs.5,39,750/- to the Respondent No.4. However, it is an admitted position that the said amount is still lying with the Petitioner-Society. Thus, it is clear that this is a matter where an Application for Recovery Certificate has been filed for an amount of Rs.4,12,653/- which included interest on arrears at 21% per annum and at the same time, the Society has retained the said deposit of Rs.5,39,750/-.

8. Thus, as rightly held by the impugned Orders there are several triable issues raised by Respondent No.4. In the light of law laid down by this Court in **Top Ten** (supra), there is no illegality or irregularity committed by the authorities in passing the impugned

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Orders. Both the authorities have relied on *Top Ten* (supra).

9. Accordingly, interference by this Court under Article 227 of the Constitution of India is not warranted.

10. The Writ Petition is dismissed, however with no order as to costs.

[MADHAV J. JAMDAR, J.]