

Dusane

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

WRIT PETITION NO.6694 OF 2023

Usha Garden CHS Limited ...Petitioner

V/s.

The Divisional Jt. Registrar ...Respondents
Co-operative Societies, Mumbai
& Ors.

Mr. Shrey Fatterparkar a/w Kiran Padalkar i/by
Padalkar & Partners for Petitioner.

Mr. C.D. Mali AGP for State-Respondent Nos.1 and 2.

Mr. R.Y. Sirsikar, for MCGM- Respondent No. 4.

Mr. Atul Singh for Respondent No. 5.

CORAM: MADHAV J. JAMDAR, J.
DATE: 30th August 2023

P.C.:

1. Heard learned Counsel appearing for the Petitioner, Respondent No.5, learned AGP for Respondent Nos. 1 and 2 and learned Counsel appearing for Respondent No. 4-MCGM Respondent No.4.

2. By the present Writ Petition, the Petitioner-Society is challenging the legality and validity of the order dated 6th November 2020 passed by the Deputy Registrar, Co-operative Societies, 'P' Ward, Mumbai under Section 23(2) of the

Maharashtra Co-operative Societies Act, 1960 ("**MCS Act**"), by which the Society has been directed to grant Membership to the Respondent No. 3. The said order was challenged by the Society by filing Revision Application No. 341 of 2021. The Respondent No. 5 has been impleaded as party to the said Revision Application as in the meanwhile the suit flat in question was transferred by Respondent No. 3 in favour of Respondent No. 5. The Divisional Joint Registrar, Mumbai, by order dated 17th August 2022 confirmed the order dated 6th November 2020 passed by the Deputy Registrar, Co-operative Societies. The Divisional Joint Registrar, in the impugned order, observed that the dispute regarding title of the suit flat and validity of documents/ sale deed are beyond the purview of the powers conferred on the Authorities under the MCS Act, 1960 and the dispute regarding the title can be decided by the Court of competent jurisdiction. It has been further observed that the authorities under the MCS Act are empowered only to decide the issue regarding eligibility of the intending member for granting membership.

3. The main submission of the learned Counsel for the Petitioner is that the allotment of the flat was made by MCGM in favour of the original PAP and there was a condition that the premises in question could not be transferred for a duration of 10

years after said allotment. It is the submission of the learned Counsel appearing for the Petitioner that the transfer is in breach of said condition. It is the contention of the learned Counsel appearing for the Respondent No.5 that there is no breach. The Divisional Joint Registrar is right in observing that the said dispute is regarding title of flat and the authorities under the MCS Act are not empowered to decide the same.

4. It is the submission of the learned Counsel appearing for the Petitioner that the Society should not be held liable for any action taken by the MCGM in this behalf. Therefore, the Writ Petition is dismissed as it has been rightly held by the authorities that they are not empowered to decide the dispute regarding the title under the powers granted under the MCS Act. It is however, clarified that the Society is not responsible for violation, if any of the said condition and the dispute concerning that and if any action is taken, then the Society will not be responsible for the same and no action can be taken against Society in that behalf.

5. It is further clarified that the order granting membership by the authorities under MCS Act will not prevent the relevant authorities to take action for violation, if any of said condition of non transfer for 10 years. However, all the contentions in that regard are expressly kept open.

6. The Writ Petition is dismissed, subject to above, with no order as to costs.

(MADHAV J. JAMDAR, J.)