

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12936 OF 2022

Shree Balgovind Co-op. Hou. Soc. Ltd.

....PETITIONER

V/S

Vinod Shantaram Murkar & Ors.

....RESPONDENTS

...

Mr. Kirit Hakani with s. Niyati Mankad for the Petitioner.

Mr. V.H. Narvekar i/b Mr. M.V. Thorat for Respondent No.1.

Mr. A.P. Vanarse, AGP for Respondent Nos.2 to 4/State.

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CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 07, 2023.

P.C.:

1 The challenge in the present Petition is to the order dated 26 July 2021 passed by the Divisional Joint Registrar allowing Revision Application No.89 of 2019 filed by Respondent No.1 and directing the Petitioner-Society to admit Respondent No.1 as its member.

2 I have heard Mr. Hakani, the learned Counsel appearing for the Petitioner-Society, Mr. Narvekar, the learned Counsel appearing for Respondent No.1 and Mr. Vanarse, the learned AGP for the Respondent-State.

3 After having considered the submissions canvassed by the learned Counsel appearing for the parties, it is seen that originally Mr. Ashok

Bhimrao Mokashi was a member of the Petitioner-Society in respect of Garage No.GB-13. He was issued a share certificate. Mr. Ashok Bhimrao Mokashi desired to sell the garage and Respondent No.1 desired to purchase the same. Both approached the Society who issued No Objection Certificate dated 28 January 2011 for sale of the garage after accepting the transfer charges of Rs.25,000/- from Respondent No.1. In pursuance of the NOC so issued by the Petitioner-Society, Respondent No.1 proceeded to purchase Garage No.GB-13 from Mr. Ashok Bhimrao Mokashi by executing a deed of transfer dated 2 June 2012. The Petitioner-Society has later refused to admit Respondent No.1 as member of the Society.

4 The learned Counsel appearing for the Petitioner-Society would submit that what is purchased by the Petitioner is not a garage but just a stilt parking. He would place reliance on the approved plan of the Municipal Corporation to demonstrate that the structure concerned is not even garage. In my view, the said defence can no longer be taken by the Petitioner-Society in view of the fact that it has consistently treated the structure as garage. In the NOC issued by the Society the structure is described as a garage. Even in the Reply as well as the written arguments filed before the Divisional Joint Registrar, the structure is described as garage.

5 Since the Petitioner-Society had admitted the occupier of the structure Mr. Ashok Bhimrao Mokashi as its member, I do not see any

difficulty as to why Petitioner-Society cannot admit purchaser of the very same structure (Respondent No.1) as its member. The transaction of purchase has been effected with consent and after accepting the transfer charges by the Petitioner-Society. The Society cannot be permitted to approbate and reprobate. It is a settled position of law that while deciding the issue of grant of membership, the nature of construction (authorized or unauthorized) cannot be gone into by the authorities concerned. Therefore, the Society cannot resist admission of Respondent No.1 as a member on the ground that the structure concerned is not covered by the expression 'flat'. If at all the Respondent No.1 is using the structure for purposes which is not sanctioned, it is for the Society to initiate appropriate action. However, the Society cannot oppose admission of membership of Respondent No.1, having granting membership to the predecessor in title of Respondent No.1.

6 I do not see any patent error in the impugned order passed by the Divisional Joint Registrar. The Writ Petition being devoid of merits, is dismissed without any order as to costs.

7 It is clarified that while rejecting the Petition this Court has not gone into the issue of legality or authorization of the structure.

(SANDEEP V. MARNE, J.)