

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

WRIT PETITION NO. 2580 OF 2017

Mhalsakant Sahakari Pani Puravtha Sanstha
Maryadit Shirol

.. Petitioner

Versus

Divisional Joint Registrar and others

.. Respondents

Mr. Ruturaj Pawar for the Petitioner.

Mr. C.D. Mali, AGP for the Respondent Nos.1 and 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATED : MARCH 16, 2023

PER COURT :

1. Heard.

2. By this petition, the challenge is to the order dated 19.03.2016 passed by the Divisional Joint Registrar in Revision No.213 of 2015, rejecting the petitioner's application filed against the order dated 12.05.2015, passed under Section 23 (2) of the Maharashtra Co-operative Societies Act, 1960 (for short, the "Act of 1960").

3. The facts of the case are that the petitioner is co-operative society classified as "Lift Irrigation Society" and is registered under the provisions of the Act of 1960. The society has been registered in the year 1974-1975 and the water irrigation

scheme is being implemented since then. One Vishnu Dadoba Khochre was member of society being the owner of plot bearing Gut no.296, which was transferred in favour of Parashram Dattu Gawandi and thereafter sold to the respondent No.3 herein, who executed gift deed in respect of part portion i.e. 0.48 R of Gut no.296 in favour of the respondent no.4. On 16.01.2014, the Respondent No.3 made an application to the petitioner seeking transfer of the shares in her favour and in favour of the respondent no.4, which came to be rejected by the respondent no.3. Subsequently correspondence ensued between the parties as regards the transfer of the shares. The petitioner informed the respondent nos. 3 and 4 that Shri Khochare had already given his resignation from the society and has also taken his share and as such there is no question of transfer of his shares. The Respondent Nos.3 and 4 thereafter addressed various communications to the petitioner seeking membership of the society. As the petitioner declined to admit the respondent no.3 and Respondent No 4 as members of the society, an application was filed by the respondent nos.3 and 4 before the Assistant Registrar, under Section 23 (2) of the Act of 1960. By order dated 12.06.2015, the application came to be allowed as against which revision application was filed.

4. Learned counsel for appearing for the petitioner submits that the procedure contemplated under Section 23 of the Act of 1960, was not followed, inasmuch as, no application was made by

the respondent Nos.3 and 4 to the petitioner society and the application was preferred directly to the Registrar seeking membership. This submission is contrary to the documents which are produced on record and in particular the documents which are annexed at page Nos.29 to 32 of the petition which show that the application for membership being addressed to the Chairman of the petitioner-society. Pertinently, in the pleadings at page 7 in sub-para (h) of paragraph 3, it is pleaded that General Body Meeting was convened to decide the issue about the membership of Respondent nos.3 and 4 and in sub-para (i), it is pleaded that on 04.12.2014, the Respondent Nos.3 and 4 had submitted the application to the Petitioner for being members of the Petitioner society.

5. In light of the documents, which are produced on record and the pleadings to that effect, the submission that no such application was made to the Petitioner society cannot be accepted. The second submission raised by the learned counsel for the Petitioner is that the provisions of Section 23 of the Act provides that the refusal shall not be without sufficient cause and in the present case, there is sufficient cause for refusing the membership, in as much as, it is claimed that the Respondent nos.3 and 4 are carrying out competing business. Upon a query posed by this Court as to whether constitution of the society and bye-laws adopted lay down such a restriction on the membership of the society, learned counsel for the Petitioner fairly concedes that there are no

documents annexed to the petition which would show such a position.

6. The provisions of the Act are very clear. Section 22 provides the category of the persons, who may be admitted as members of the society. It will be worthwhile to note the provision of Section 23 of the Act of 1960, which provides no society shall, without sufficient cause, refuse admission of membership to any person duly qualified therefor under the provisions of this Act and its bye-laws. Considering the statutory provisions, there is no valid ground for refusing the membership to Respondent Nos. 3 and 4. The admitted position is that the Respondent Nos.3 and 4 are the owners of gut no.296, which is within command area of the Petitioner-society. In such situation, it will be the requirement that the lands of the Respondent Nos.3 and 4 be irrigated and water supply is required. It is evident from the record that the application was made for membership of the society which application has been refused without just cause.

7. Learned counsel for the Petitioner has sought to place reliance on the resolution passed by the petitioner-society, which is annexed at page 24 of the petition, which resolves to refuse the membership and records that the Petitioner Society has no objection to the members of Petitioner Society irrigating their lands through independent water scheme. It further records that presently that it is not possible to admit any members for the reason that it is difficulty

to supply water to the existing members.

8. In my opinion, the reasons for refusal of the membership is not in accordance with law. The Respondent Nos.3 and 4 have purchased the land from member of the society. No provision is shown to demonstrate restriction on sale of land by member of society. In the absence of any such restriction, the Petitioner cannot deny the membership to the purchasers on the specious ground that the Petitioner Society is finding it difficult to supply water to its existing members. Upon purchase of land, the Respondent Nos.3 and 4 are entitled to membership of the Petitioner Society as contemplated by the provisions of Act of 1960. There is no sufficient cause demonstrated by the Petitioner to refuse the membership.

9. In light of the above, there is no infirmity in the impugned order.

10. Writ Petition is devoid of merit and accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)