

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11875 OF 2016

Farokh K. Mistry & Anr. ... Petitioners
V/s.
Inlaks Nagar Co-op. Housing Society & Anr. ... Respondents

ALONGWITH
INTERIM APPLICATION (STAMP) NO.23261 OF 2022
IN
WRIT PETITION NO.11875 OF 2016

The District Deputy Registrar No.3
Griha Nirman bhavan Bandra East ... Applicant

IN THE MATTER BETWEEN :

Farokh K. Mistry & Anr. ... Petitioners
V/s.
Inlaks Nagar Co-op. Housing Society & Anr. ... Respondents

Mr.Farokh K. Mistry, Petitioner in-person.
Mr.B.V. Samant, AGP for Respondent No.2-State.

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 28 August 2023.

P.C. :

The Petitioner claims to be a nominee of one Ms.Mausami Madan Ramnani, who was stated to be a member of the Respondent-Co-operative Housing Society. Petitioner, who says he is

a practicing advocate, is not related to Ms.Mausami Madan Ramnani. The Petitioner had approached the society for transferring the flat in Petitioner's name, which the Respondent-Society had refused. The Petitioner thereafter had approached the Authorities under the Maharashtra State Co-operative Societies Act, 1960 for necessary directions to transfer the flat in the name of the Petitioner.

2 Thereafter, Petitioner had filed Writ Petition No.11183 of 2014 before the Single Judge. While the present Writ Petition was pending the learned Single Judge passed an order on 6 June 2018 in the said Writ Petition No.11183 of 2014. This order is placed on record by an additional affidavit. The learned Single Judge opined that there is a serious dispute as to whether nomination of the original member was withdrawn or not and opined that this disputed question could not have been gone into by the Authorities under the Act of the Maharashtra Co-operative Societies Act, 1960. The learned Single Judge observed that if any civil suit is filed by the Petitioner claiming any right in respect of the property, the Civil Court will decide the proceedings without being influenced by the observations made in the impugned order by the Co-operative Authorities. Thereafter, the learned Single Judge directed that the flat be transferred to the name of original member.

3 The question is whether in these circumstances we can direct that the flat be transferred in Petitioner's name in this Writ Petition under Article 226 of the Constitution of India. The

Petitioner had attempted to seek directions from the Co-operative Authorities. The learned Single Judge observed that various disputed questions of facts arise and that the appropriate course of action would be to file a civil suit. The same position would apply if we have to decide this Petition under Article 226 of the Constitution of India. Therefore, the writ as sought for by the Petitioner to direct to transfer the flat in Petitioner's name cannot be granted. Issuance of such a writ will entail adjudication of various disputed facts. The Petitioner in person then sought to assail the order of the learned Single Judge before us, which is obviously not permissible.

4 As regard the implementation of directions to transfer the flat in the name of the original owner is concerned, it is open to the Petitioner to seek implementation of the said directions. With these observations, Writ Petition is disposed of.

5 In view of disposal of the Writ Petition, Interim Application (Stamp) No.23261 of 2022 does not survive and stands disposed of accordingly.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)