



1 IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12887 OF 2022

WITH

INTERIM APPLICATION NO.13531 OF 2023

Mrs. Meera Chandrabhan Singh Thakur] ... Petitioner / Applicant

Versus

Competent Authority and District Deputy]
Registrar of Co-operative Societies,]
District – Thane, Thane & Ors.] ... Respondents

Dr. Pawan Kumar Pandey for Petitioner / Applicant.

Mr. P. P. Pujari, AGP State - for Respondent Nos.1 and 2.

Mrs. Preeti Walimbe for Respondent Nos.3 and 4.

CORAM :- SANDEEP V. MARNE, J.

DATE :- 25 SEPTEMBER, 2023

P. C. :-

1. By this Petition, Petitioner challenges order dated 12/12/2017 passed by the Competent Authority and District Deputy Registrar of Cooperative Societies, Thane, allowing the application filed by Respondent No.3 for registration of Sai Amrut Cooperative Housing Society Limited.

2. Briefly stated, the facts of the case are that the Petitioner is the owner as well as developer, who has constructed a building consisting of Ground + 4 floors comprising of 4 commercial units and 7 residential units. Petitioner holds 4 commercial units and 2 residential units in the building. Petitioner claims that occupiers of 2 residential units have not

paid full consideration in respect of their flats and accordingly disputes are pending. It is also Petitioner's case that Respondent No.4 – Mahesh Ambadas Chaudhary had filed proposal for registration of proposed 'Satyanarayan Cooperative Housing Society Ltd.' which was rejected by the Competent Authority by order dated 14/06/2017 on the ground that out of 7 promoters submitting the proposal, 2 flat purchasers were in occupation of 2 flats each and accordingly he held that the proposal was filed only by 5 promoter members, which were less than 51% of total members.

3. It appears that Respondent No.3 filed a separate proposal for registration of proposed 'Sai Amrut Cooperative Housing Society Limited' before the Competent Authority. It is Petitioner's case that Respondent No.3 is yet to pay full consideration in respect of Flat No.01, on account of which his agreement has been terminated by the Petitioner and a suit in that regard bearing no.314/2019 is pending before the Court of Civil Judge Junior Division, Kalyan, for a declaration that the agreement is not binding. It is also Petitioner's case that the other promoter members Mr. Somnath Waman Bhoir and Mr. Mayur Padmakar Bhagat jointly own Flat No.101, who were erroneously shown as two separate members in the proposal. Similar is the case in respect of Mr. Kartik Manoharan and Manibalan Manoharan who jointly own Flat No.401. In respect of promoter member Mr. Sopan Mahajan, it is contended that, he is not residing in Flat No.302 for several years and has failed to pay any water charges and sewerage charges and Suit No.125/2018 in that regard has been filed in the Court of Civil Judge Junior Division, Kalyan. Additionally, Civil Suit No.231/2016 is filed against Respondent No.4 Mahesh Ambadas Chaudhary in respect of non-payment of dues of Flat No.202. It is therefore Petitioner's contention that the proposal was faulty

as the same was submitted by the Chief Promoter whose flat purchase agreement itself is in dispute as well as by inflating the number of promoters who do not actually own equivalent number of flats in the building. Petitioner contends that she did not receive any notice from Competent Authority who proceeded to pass order dated 12/12/2017 ordering registration of Sai Amrut Cooperative Housing Society Limited under the provisions of Section 10(1) of Maharashtra Ownership of Flats Act, 1963 (for short, 'MOFA'). Petitioner claims that she was not aware of passing of order dated 12/12/2017 and became aware of the same only on 18/10/2018 when Respondent No.3 attempted to display society's name at the building. Petitioner has accordingly filed the present Petition challenging the order dated 12/12/2017.

4. I have heard Dr. Pawan Kumar Pandey, the learned counsel appearing for Petitioner, who would submit that the order dated 12/12/2017 deserves to be set aside on account of failure to issue any notice to the Petitioner before entertaining the application of Respondent No.3 for registration of society. He would submit that though Petitioner resides in the same building, her address was mentioned deliberately as 'Kartik Sadan, Kalyan Road, Dombivali (East), Taluka – Kalyan, District – Thane'. That on account of erroneous address mentioned in the application, the Petitioner did not receive any notice of the proceeding. He would therefore urge that the proceedings are required to be remanded for fresh consideration by granting an opportunity of hearing to Petitioner.

5. Dr. Pandey would further contend that even on merits, the proposal filed by the Respondent No.3 was faulty as the Petitioner herself owns and occupies 6 out of 11 units in the building. He would further

submit that the Respondent No.3 did not have any authority to file the proposal for registration of society since his flat purchase agreement stands terminated. That, names of same set of persons were included twice in the form for the purpose of artificially inflating the number of promoters. That, such members own one unit each and that therefore, their names cannot be shown twice in the proposal. He would submit that similar application filed by the Respondent No.4 had been rejected by the Competent Authority earlier on 14/06/2017 and the very same authority has proceeded to allow identical application of the Respondent No.3 two months later on 12/12/2017.

6. Dr. Pandey would then contend that another cooperative society has been formed in respect of adjacent building forming part of the same layout. That the flat purchasers of the building in question ought to have become members of that society and the Petitioner is willing to convey title in respect of proportionate FSI in favour of that society. That, therefore, there was no need of formation of another society in respect of smaller portion of the building. He would submit that most of the members of the registered society have not been paying dues in respect of their flats and that therefore it would be impossible to maintain the building on account of registration of a separate society for just 11 flats.

7. *Per contra*, Ms. Walimbe the learned Counsel appearing for Respondent Nos.3 and 4 would oppose the Petition and support the order passed by the Competent Authority. She would submit that the Competent Authority had issued notice to the Petitioner on 31/10/2017 and therefore it is difficult to believe that she did not receive any notice. She would further submit that in the agreement executed with flat purchasers, the Petitioner has shown her address as 'Kartik Sadan, Kalyan

Road, Dombivali (East), Taluka – Kalyan, District – Thane’ and therefore the same address was stated in the proposal for registration of society. She would further submit that by order dated 06/09/2023, the Competent Authority has granted unilateral deemed conveyance in favour of Sai Amrut Cooperative Housing Society Limited in respect of land admeasuring 385.991 sq.meters. She would therefore submit that disturbing order of registration of society at this stage would also affect the certificate of unilateral deemed conveyance granted in favour of the society.

8. Rival contentions of the parties now fall for my consideration.

9. It must be observed at the outset that the impugned order directing registration of the society has been passed on 12/12/2017 whereas the present Petition has been filed on 24/08/2022. There is a delay of 5 long years in setting up challenge to the order dated 12/12/2017. The only explanation for delay is to be found in para 12 of the Petition which reads thus:-

“12. The Petitioners have approached this Hon’ble Court as expeditiously as possible and hence there is no delay or latches in filing this Petition, which may cause prejudice to the Respondents. The Petitioner came to know of the registration of the society only when the Respondent No.3 tried to put board on 18.10.2018 and immediately therefore, the Petitioner approached the Respondent No.1 office and obtained the certified copy of the record and proceedings.”

Thus, the Petitioner has admitted acquisition of knowledge of registration of the society on 18/10/2018. She has averred that upon acquisition of such knowledge, she applied for certified copy of order dated 12/12/2017. However, why the Petition is filed thereafter in the year 2022, has not been explained in any manner. Despite acquisition of

knowledge of registration of society on 18/10/2018, the Petitioner has waited for 4 long years for filing the present Petition. There is no explanation in the entire Petition for such delay.

10. Turning to the merits of the Petition, the main objection raised by the Petitioner to the impugned order is non-receipt of any notice of proceedings, which led to passing of the impugned order. It is seen that in the proposal filed by the Respondent No.3, Petitioner's address was shown as is reflected in the Agreement to Sale. Respondent Nos. 3 and 4 have placed on record copy of notice dated 31/10/2017 dispatched to the Petitioner at the address so stated. In the entire Petition, the Petitioner has not made any statement on oath that she has no connection with the premises 'Kartik Sadan, Kalyan Road, Dombivali (East), Taluka – Kalyan, District – Thane'. Be that as it may, there appears to be some ambiguity with regard to service of notice in the proceedings on Petitioner at the address given in the proposal. I have, therefore, considered all other objections raised by the Petitioner about merits of the order with a view to find out whether there is any substance in such objections warranting remand of the proceedings for grant of opportunity to the Petitioner before the Competent Authority.

11. Petitioner has pointed out errors in the proposal submitted by the Respondent No.2 on following counts :-

- (i) Agreements to Sale of the Chief Promoter is terminated;
- (ii) Artificial inflation of number of promoters with a view to cross requisite percentage of 51.
- (iii) Pendency of Suits against some members for non-payment of building dues.
- (iv) Rejection of similar proposal previously

- (v) Registration of M/s. Meera Shree Cooperative Housing Society
- (vi) viability of managing affairs of the building with limited number of members, most of whom do not pay monthly maintenance.

12. So far as the first objection is concerned, it is submitted by the Petitioner that Agreement of Mr. M. T. Pokharkar has been terminated and Civil Suit No.314/2019 is pending before the Civil Judge Junior Division, Kalyan for a declaration that the Agreement is not binding. I am of the view that till decision of the said suit, registration of the society cannot be delayed. Respondent No.3 is admittedly in occupation of Flat No.401. If any consideration amount is due from the Respondent No.3, the Petitioner has already initiated remedies in respect of her grievance about non-payment of that amount. However, registration of a cooperative society cannot be delayed indefinitely till such Civil proceedings are decided between the Petitioner and the Respondent No.2. Therefore, mere pendency of Civil Suit No.314/2019 could not be a reason for not acting on proposal for registration of society formed by her.

13. So far as allegation of artificially inflating number of members is concerned, the Respondent Nos.3 and 4 have given particulars of flats owned by each of the promoters in their affidavit-in-reply as under:-

Sr. No.	Name of Unit holder	Unit No.	Floor	Date	Registration No.
1.	Sahadu Tukaram Pokharkar	01	Ground	27.04.2015	1794/2015
2.	Somnath Waman Bhoir	101	First	11.09.2015	6184/2015
3.	Mayur Padmakar Bhagat	102	First	11.09.2015	6184/2015

4.	Mahesh Ambadas Choudhary	202	Second	14.05.2004	1862/2004
5.	Sopan Pandharinath Mahajan	302	Third	12.03.2004	978/2004
6.	Kartik Manoharan	401	Fourth	03.11.2010	7322/2010
7.	Manibalan Manoharan	402	Fourth	11.08.2009	4066/2009

14. They have also produced Index-II extracts in respect of flats purchase agreements of the members to demonstrate purchase of multiple units. These documents would indicate that the said members do own multiple units. To illustrate, Kartik Manoharan and Manibalan Manoharan have purchased unit nos. 401 and 402. Petitioners has paced photographs on record to demonstrate that the two flats are infact one as the door of the other flat is always shut. Whether the members have amalgamated the two units or using them as one Unit becomes irrelevant. What is relevant is whether two separate units have been sold by agreement. The Index-II Extracts do indicate sale of two units. Therefore, there is no error in including their names twice in the proposal as promoters. If Petitioner's contention is to be accepted, her name will have to be considered only once in respect of 6 units owned by her. I am, therefore, of the view that the allegation of artificial inflation of the promoters is totally misplaced.

15. So far as objection of non-payment of dues of property taxes, water charges, sewage charges by some of the members and filing of Suits is concerned, pendency of that litigation would not make those members ineligible to act as promoters for the proposal for registration of society.

16. So far as the objection of rejection of previous proposal filed by Respondent No.4 is concerned, the Competent Authority had rejected the said proposal after forming an opinion that less than 51% members

had submitted the proposal. However, in respect of proposal of Respondent No.3, the Competent Authority had arrived at a finding that 7 out of 11 flat purchasers had submitted a proposal for registration of the society. I have already arrived at a conclusion that some members owning multiple units are entitled membership in respect of each of those units and are rightly considered as separate promoters for the purpose of determining the requisite 51% of promoters. Rejection of previous proposal in such circumstances would not act as res judicata. Correctness of previous rejection is not the subject matter of present petition. Therefore, without going into the correctness of the earlier rejection dated 14/06/2017, I am of the view that the finding recorded by the Competent Authority in the order dated 12/12/2017 about submission of proposal by 7 promoters cannot be faulted.

17. As far as the last objection of registration of M/s. Meera Shree Cooperative Housing Society is concerned, the same appears to have been registered in respect of a separate wing of the building. It is permissible to form multiple societies in respect of each wing. The exact intention behind raising this objection is unknown, but it appears that Petitioner wants the remaining flat purchasers (promoters of Sai Amrut Society) to join Meera Shree Cooperative Housing Society and so that she stays out of any societies. This appears to be one of the covenants of the agreements where Petitioner intended to retain portion of same building under name Meera Apartments exclusive with her. If her 6 units are indeed part of the same building and wing where promoters of Sai Amrut Society own flats, She expects that they should join society of a separate wing (building) by keeping her independent. This is not just unimaginable but also be unworkable. Also since formation of multiple societies for different wings of a building is permissible, Petitioner cannot

insist that there must be only one society, of which she would not be a member.

18. This leaves the last objection raised by Petitioner about viability of managing affairs of the building with limited number of members, most of whom do not pay monthly maintenance. This cannot be a valid ground for refusal of registration of a society. Once it is satisfied that there are minimum required units and 51% of the unit holders submit a proposal for registration of a society, the Registrar is bound to register the society. He cannot go into the issue of viability of such society to manage affairs of the building.

19. I thus find none of the objections raised by Petitioner to be tenable. It is therefore not necessary to remand the proceedings to the Competent Authority on the ground of alleged non-receipt of notice by Petitioner.

20. It appears that the Petitioner wants to stay away from any of the societies by retaining front portion of the building which she has branded as Meera Shree Apartments, exclusively in her possession without conveying the same to the society. She thus wants unit holders in same building to be divided in two parts- (i) she retaining 6 units without becoming member of any society and (ii) rest of 7 unit holders to join society another society formed by unit holders of different wing (building). This conduct on the part of the Petitioner is unfathomable as she wants to remain out of the society despite owning units in the building in respect of which Sai Amrut Cooperative Housing Society Limited is formed.

21. Considering the overall conspectus of the matter, I am of the view that even if the Petitioner was to demonstrate that she did not receive any notice of proceedings before passing of order dated 12/12/2017, no case is made out for setting aside the said order for the purpose of remanding the proceedings. Petitioner failed to point out any patent error in the impugned order dated 12/12/2017 even on merits. There is also delay and laches in filing the present Petition. Such delay and laches on the part of the Petitioner has led to further developments in the form of grant of certificate of deemed conveyance in favour of Sai Amrut Cooperative Housing Society Limited on 06/09/2023. The real objective of the Petitioner in filing of the present Petition appears to defeat the application for grant of deemed conveyance. Setting aside the order of registration of Sai Amrut Cooperative Housing Society at this stage would render the certificate of unilateral deemed conveyance invalid. This is yet another ground why no interference in the impugned order at this stage is warranted.

22. I am, therefore, of the view that the Petitioner has not been able to make out any case for interference of this Court in the impugned order dated 12/12/2017. Writ Petition being devoid of merits, is dismissed without any order as to costs.

23. In view of dismissal of Writ Petition, Interim Application does not survive and the same is also disposed of.

(SANDEEP V. MARNE, J.)