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wp10614.23

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10614 OF 2023

**ABHIJIT RAMRAO SALUNKE
VS
THE DIVISIONAL JOINT REGISTRAR COOPERATIVE SOCIETIES
NASHIK, DIVISION NASHIK**

Mr. K. J. Suryawanshi, Advocate for the petitioner
Mr. V. S. Badakh, AGP for the respondents/State
Mr. S. S. Patil, AGP for the respondent No.3
Mr. V. D. Hon, Senior Advocate I/b Mr. A. V. Hon, Advocate for
the respondent No.4

**CORAM : KISHORE C. SANT, J.
RESERVED ON : 30th SEPTEMBER, 2024
PRONOUNCED ON : 03rd DECEMBER, 2024**

P. C.

1. This petition arises out of the judgment and order passed by the learned Divisional Joint Registrar Cooperative Society in Revision Application No. 34/2023 dated 21-08-2023 confirming the order dated 06-02-2023 passed by the Deputy Registrar Cooperative Societies, Tq. Dhule.

2. Dispute is with respect to nomination and membership to the Co-operative Housing Society between the petitioner and respondent No.4. Both of them claimed right to the membership of the cooperative society by virtue of their respective nominations by late Chhabubai Salunke. The respondent Nos. 1 and 2 are the authorities under the Cooperative Societies Act. Respondent No.3 is the Cooperative Housing Society whose membership is in dispute. It is the case of the petitioner that Chhabubai happens to be his grand mother who was a member of the respondent No.3-Society. She was allotted a plot No. 55 in the society. Chhabubai died on 07-02-2022. During her life time she had made an application on 21-09-2019 nominating the petitioner. The application was approved by the managing committee in its meeting dated 27-09-2019 bearing resolution No.5. The society pursuant to the resolution also entered the name of the petitioner.

3. There is no challenge to the resolution dated 27-09-2019. Chhabubai by one more application dated 26-04-2021

requested the society to transfer the plot No. 55 and the shares in the name of the petitioner. The petitioner thereafter made an application for showing him as member in place of Chhabubai. The society approved the said application in the meeting dated 03-06-2021 and allowed the transfer of the membership and the plot in the name of the petitioner vide resolution no. 4. The petitioner even deposited membership admission fees and shares transfer fees. Even this resolution is not challenged by any one.

4. Respondent No. 4- Uncle of the petitioner and son of the deceased, made an application dated 28-02-2022 and requested for grant of membership. The society rejected the application and communicated the decision vide communication dated 13-04-2022. The respondent No. 4 again made an application to the soccity on 09-07-2022. However, same again came to be rejected vide communication dated 20-07-2022. It was stated in the communication that the petitioner is already given the membership of the society. On this respondent No.4 made an application to the Deputy Registrar Cooperative

Societies, Dhule for considering his nomination in place of the deceased Chhabubai. The society objected to this. The Deputy Registrar treated this application of the respondent No.4 as an appeal and allowed the same. The society is directed to cancel the entry of the membership of the petitioner and to give the membership to respondent No.4 in his capacity as legal representative. Aggrieved by this order, the petitioner filed a revision before the Divisional Joint Registrar Cooperative Societies. Said revision came to be dismissed. The petitioner being aggrieved by this dismissal is before this court.

5. The Mr. Suryawanshi, learned advocate for the petitioner submits that the deceased in her life time had nominated this petitioner. Thereafter she even filed an application for transfer of the membership and the plot in the name of the petitioner. The society clearly accepted the application and even transferred the shares in the name of the petitioner and accepted him as a member. Considering that the deceased in her life time had clearly filed an application to

transfer the shares, the petitioner acquired the right. None of these actions or resolutions by the society are challenged by respondent No.4. The authorities thus failed to appreciate this basic facts and has held against the petitioner. He thus prayed for quashing and setting aside the impugned judgment and order. He mainly submits that the orders are without jurisdiction. The authorities are only to consider the nomination and the application made by the deceased during her life time. The authorities do not have jurisdiction to decide the question of heirship.

6. Mr. Hon, learned senior counsel vehemently opposed the petition. He submits that the deceased had no right to transfer the shares and to nominate the petitioner. In fact deceased Chhabhubai was not the original allottee of the plot. Father of this respondent was original allottee. It is after death of mother Chhabubai was accepted as a member. Respondent No.4 happens to be legal representative of the deceased being her son. The society ought to have transferred the membership

and the plot in favour of respondent No. 4. He submits that both the authorities have rightly held that it is the respondent No. 4 who has acquired the right in the property of the deceased being legal representative. The nomination will not confer any right upon the petitioner. The property always goes to legal heirs in order of inheritance. The nomination is only for the purpose of facilitating the society to take appropriate decision and action. Mere nomination in the name of the petitioner will not confer any right over the petitioner. Till the death of Chhabubai respondent No. 4 had no reason to make any application. Mr. Hon, learned senior counsel submits that when the respondent NO. 4 filed an application no enquiry is necessary. There is no dispute about the resolutions between the parties. Respondent No. 4 happens to be son of the deceased and for that he need challenge any resolution. It is alleged that the petitioner was admitted by the society in collusion with the petitioner. Plot NO. 55 was originally allotted to husband of deceased namely late Gajmal Salunke. The deceased was thus taken by virtue of heirship. In view of this fact after Chhabubai plot should go to

the legal heirs. Chhabubai had given letter of nomination in the year 2014 in the name of heir two sons i.e. present respondent No. 4 and father of the petitioner namely Ramrao. Ramrao expired and thereafter only one nominee survived i.e. present respondent No.4. In view of this the society had no option that to accept respondent No.4 as a member. It also submission of the learned senior counsel that in fact signature on the documents of nomination in favour of the present petitioner are forged. The documents are prepared in collusion with the society. When Chhabubai was alive there was no question of petitioner or society taking any action in making the petitioner as member of the society. He submits that authority has rightly considered this aspect and has passed the order. No interference is called for in the said decision holding that the present respondent No. 4 is entitled to get his name entered as nominee in place of the deceased Chhabubai. The applications preferred by the Chhabubai nominating the petitioner are forged. Handwriting expert has clearly given a report that handwriting in the so called application and admitted signatures of the Chhabubai do

not tally.

7. Mr. Patil, learned advocate for the respondent No.3 supports the petition. He submits that by-laws of the society are clear. The society has rightly admitted the petitioner as its member on the basis of nomination in his favour. The deceased had even filed an application for transfer of share and the plot in favour of the petitioner. In view of by-law 23 provides that member can add, or nominate any person. The member can even change earlier nomination. In view of nomination in favour of the petitioner, he was rightly admitted as a member of the society. By law 34 provides that if a member dies without making any nomination, it is only in such cases the membership would be transferred in the name of the legal heirs. If there is dispute about the heirship in such cases, person claiming membership has to submit the heirship certificate from the court of competent jurisdiction. By-law 37 also provides that member can transfer membership and his property by giving 10 days notice to the society. In the present case already notice was sent

to the society and the society has acted upon the same. He thus, submits that the society has rightly accepted the petitioner as its member.

8. In the rejoinder the learned advocate for the petitioner submits that the learned Registrar cannot decide the question of heirship. The learned Registrar has only to decide the issue of membership to the society.

9. The authority after rival submissions considered the sections 23(1-A), 13(2)(3) Rule 25 of the Cooperative Societies Act and Rule 25 of the Cooperative Societies Rules. The authority held that plot No. 55 was originally allotted to late Gajmal i.e. husband of deceased Chhabubai. After death of Gajmal, the society transferred the said plot in the name of the deceased Chhabubai. The deceased gave an application on 21-09-2019 nominating the petitioner. The society pursuant to said application passed a resolution No. 5. It was necessary for the society to give notice to all the heirs of Chhabubai. It ought to

have granted an opportunity to raise the objections. The society instead of calling for the objections has passed the resolution. It is held that heirs are at liberty to approach the competent civil court for heirship certificate. Thus, the Divisional Joint Registrar confirmed the order passed by the Deputy Registrar Cooperative Society, Dhule holding that accepting the petitioner as nominee was illegal and incorrect.

10. In support of the case the learned Advocate Mr. Suryawanshi relied upon the judgment reported in 2016(2) Bom CR 328 in the case of Bajarang Labour Co-operative Society and others Vs The Divisional Joint Registrar of Cooperative Society and others. This court at Nagpur considered the provision of Section 23(A-1) of the Act. It is held that question as to whether the persons became deemed members or otherwise has to be decided by the Registrar in view of section 23(1-A) of the Act and the said powers are delegated to District Deputy Registrar. The Hon'ble Apex Court in the case of Indrani Wahi Vs The Registrar of Cooperative Society and others

reported in AIR 2016 SC 1969, held that transfer of share or interest based on nomination in favour of the nominee is with reference to the concerned Cooperative Society and same is binding on the said society. The Cooperative Society has no option whatsoever except to transfer the membership in the name of the nominee. In the case of Harsha Nitin Kokate Vs Saraswat Co.op. Bank Ltd and others reported in 2010 (4) ALL MR 51. It is held by single judge of this court that nominee is entitled to all the rights in the shares to the exclusions of all other persons provided prescribed procedure for nomination or transfer share is followed. The court considered the provision of Section 13 of the Act which provided that on the death of a member of the society, the society shall transfer the share or interest of the deceased member to a person or persons nominated by deceased. If there is no nominee then it should be given to such person who appears to be legal representative of the deceased member and such person should be duly admitted as a member of the society. It is further held that society is not concerned with the dispute amongst heirs of the

deceased.

11. Considering all above, this court finds that in the present case the petitioner was nominated by the deceased during her life time. Even after nomination she had filed an application for transferring the share and the plot No. 55 in the name of the present petitioner. The society on considering the nomination has duly accepted and admitted the petitioner as member of the society. There is no challenge raised by respondent No. 4. In view of section 23 the member of the society can nominate other person and also can make an application to the society to transfer the shares in the name of such person. The society has to act upon such nomination and application for transfer. Respondent NO. 4 without challenging the resolution of the society and without following any other procedure for getting the nomination cancelled has approached the learned Registrar. It was necessary for the learned Registrar to consider that the petitioner is already nominated and is duly accepted as a member of the society. Share so also plot stood

transferred in his name and under such circumstances unless said action is quashed and set aside no order could have been passed by the learned Registrar contrary to the society resolutions. At least after coming to know about passing of the resolution it was open for the respondent No. 4 to challenge the said resolution and nomination etc. which he has not done. Section 23 clearly provides mode and manners as to how a person is to be nominated. If at all respondent No.4 was aggrieved he should have first challenged the resolution by filing appropriate proceedings. Instead, he approached the learned Registrar. The learned Registrar also has considered the said grievance without looking to the fact that already the petitioner is admitted as member to the society and unless that action set aside no order should have been passed. Thus for this reasons this court holds that the impugned judgment and order deserves to be quashed and set aside.

12. The writ petition is thus allowed. The impugned judgment and order is set aside. It is made clear that it is open to respondent No. 4 to take out any appropriate proceeding, if so advised under law.

[KISHORE C. SANT, J.]

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